Supreme Court, U.S.
FILED
NOV 14 2003
OFFICE OF THE CLERK

No. 02-1684

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL YARBOROUGH, Warden of California State Prison - Los Angeles County, *Petitioner*,

v.

MICHAEL ALVARADO, *Respondent*.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED MAY 12, 2003
WRIT OF CERTIORARI GRANTED SEPTEMBER 30, 2003

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Docket as of December 29, 2000 7:17 p.m.

U.S. District Court
Central District of California (Eastern Div.)

CIVIL DOCKET FOR CASE #: 00-CV-326
Michael Alvarado v. R.Q. Hickman

Filed: 05/18/00
Assigned to: Judge Virginia A. Phillips
Referred to: Magistrate Judge Charles F. Eick
Demand: $0,000
Nature of Suit: 530
Lead Docket: None
Jurisdiction: Federal Question
Dkt #: is 2:00-cv-02340
Cause: 28:2254 Petition: Writ of H/C - State

MICHAEL ALVARADO petitioner	Michael Alvarado CDC K-76657 [COR LD NTC] [PRO SE] Ione Mule Creek State Prison P O Box 409000 Ione, CA 95640
v.	
R Q HICKMAN, Acting Warden of Mule Creek State Prison respondent	Beverly K Falk FTS Ext 2389 FAX 213-897-6496 [COR LD NTC] Kenneth C Byrne FTS Ext 2687 FAX 213-897-6496 [COR LD NTC] CAAG - Office of Attorney General of California 300 S Spring St, Ste 500 Los Angeles, CA 90013-1204 213-897-8964

MICHAEL ALVARADO
petitioner

v.

R Q HICKMAN, Acting Warden of
Mule Creek State Prison
respondent

DOCKET PROCEEDINGS

DATE	#	DOCKET ENTRY
3/6/00	1	PETITION FOR WRIT OF HABEAS CORPUS by petitioner Michael Alvarado in State Custody referred to Magistrate Judge Charles F. Eick. (pc) [Entry date 03/09/00]
3/6/00	2	NOTICE OF REFERENCE to Magistrate Judge Charles F. Eick (pc) [Entry date 03/09/00]
3/9/00	3	ORDER by Magistrate Judge Charles F. Eick requiring ans to pet for writ of h/c. It is ord that respondent file an ans to the pet within 23 days of the date of this order. It is fur ord that if petitioner desires to file a trav to the ans, he shall do so within 15 days of the date the ans is filed. (shb) [Entry date 03/13/00]
3/9/00	4	ORDER by Magistrate Judge Charles F. Eick that petitioner shall serve upon respondent a copy of every future pldg or other doc subm for consideration by the crt. He shall incl with the original paper to be filed with the clerk a certificate stating the date that a true and correct copy of the paper was mailed to respondent or his cnsl. (shb) [Entry date 03/13/00]

3/20/00	5	RECEIPT showing proof of delivery by legal mail of 2 orders received 3/13/00 by Michael Alvarado (shb) [Entry date 03/22/00]
3/20/00	6	RETURN RECEIPT of Certified Mail showing delivery to Office of the Atty General rcvd by signature illegible of petition & 2 orders on 3/15/00 (shb) [Entry date 03/22/00]
3/29/00	7	NOTICE by respondent R Q Hickman of interested parties (shb) [Entry date 03/30/00]
3/29/00	8	NOTICE OF MOTION AND MOTION by respondent R Q Hickman for summary dismissal of pet for writ of h/c Lodged prop ord (shb) [Entry date 03/30/00]
3/29/00	8	REQUEST by respondent R Q Hickman for stay of order requiring return pending mot for dism (shb) [Entry date 03/30/00]
3/30/00	9	MINUTES: The crt is in receipt of respondent's mot for summary dism of pet. Petitioner shall file opp to the mot within 30 days of the date of this order. The crt will take the mot under subm w/o oral arg, unless otherwise ordered. Respondent need not file an answer until further ntc of this crt. by Magistrate Judge Charles F. Eick CR: N/A (shb) [Entry date 04/04/00]
4/24/00	10	OPPOSITION by petitioner Michael Alvarado to motion for summary dismissal of pet for writ of h/c [8-11] (yl) [Entry date 04/25/00]
4/25/00	11	MINUTES: denying motion for summary dismissal of pet for writ of h/c [8-1]; Respondent shall file an ans within 30 days of the date of this order. Petitioner may file a traverse within 15 days of the date the ans is

filed. by Magistrate Judge Charles F. Eick CR: N/A (shb) [Entry date 04/26/00]

5/3/00 12 REQUEST by petitioner Michael Alvarado for appt of cnsl (shb) [Entry date 05/04/00]

5/3/00 13 DECLARATION of Tracy J Dressner by petitioner Michael Alvarado in suppt of request for appt of cnsl [12-1] (shb) [Entry date 05/04/00]

5/3/00 15 DECLARATION of Tracy J. Dressner by petitioner Michael Alvarado re request [12-1] (ab) [Entry date 05/12/00]

5/4/00 14 MINUTES: denying request for appt of cnsl [12-1] by Magistrate Judge Charles F. Eick CR: N/A (shb) [Entry date 05/11/00]

5/9/00 16 ORDER OF THE CHIEF JUDGE # 00-087 approved by Judge Terry J. Hatter Pursuant to the appointment of Judge Richard A. Paez to the 9th Circuit Court of Appeals, this case is transferred from the calendar of Judge Richard A. Paez to the calendar of Judge Virginia A. Phillips for all further proceedings. (cc: all counsel) (rn) [Entry date 05/19/00]

5/18/00 17 NOTICE RE INTRA-DISTRICT TRANSFER filed. Case reassigned to Eastern Division by Order of the Chief Judge # 00-087 filed 5/9/00. New case no. EDCV 00-326 VAP (E) assigned to Judge Virginia A. Phillips for all further proceedings. (Original file transferred.) (cc: all counsel) (rn) [Entry date 05/19/00]

6/12/00 18 ANSWER TO PETITION for Writ of H/C by respondent R Q Hickman [1-1] (am) [Entry date 06/20/00]

6/12/00 19 NOTICE of lodging of docms (3 env) by respondent R Q Hickman (am) [Entry date 06/20/00]

6/21/00 21 REQUEST by petitioner Michael Alvarado for expansion of time to file a traverse to the ans to the petn for writ of h/c (am) [Entry date 06/28/00]

6/22/00 20 MINUTES: The Crt is in receipt of Ptr's req for Expansion of Time to File a Traverse fld 6/21/00. Ptr may file his traverse 20 days of the date of this ord. The Clk is directed to attach a Ptr's svc copy of this min ord a copy of the Ninth Circuit's decision in Bains v. Cambra, 204 F.3d 964 (9th Cir. 2000). Except as expressly stated herein, the req is den by Magistrate Judge Charles F. Eick CR: n/a (yl) [Entry date 06/23/00]

7/3/00 24 TRAVERSE by petitioner Michael Alvarado to ans to the petn for writ of h/c [18-1] (am) [Entry date 07/10/00]

7/5/00 22 REPORT AND RECOMMENDATION issd by Magistrate Judge Charles F. Eick (yl) [Entry date 07/06/00]

7/5/00 -- PLACED IN FILE - NOT USED Propd ord gr petn to compel arbitration & to dism or in the alt to stay (am) [Entry date 07/10/00]

7/6/00 23 NOTICE OF FILING REPORT AND RECOMMENDATION by Magistrate Judge Charles F. Eick and Lodging of Proposed Judgment and Order (yl) [Entry date 07/06/00]

8/3/00 25 OPPOSITION by petitioner Michael Alvarado to Report and Recommendation [22-1] (am) [Entry date 08/09/00]

8/8/00 26 ORDER by Judge Virginia A. Phillips adopting R&R of US Mag Judge [22-1]. (ENT 8-22-00) mldcpys/ntc. (ab) [Entry date 08/22/00]

8/8/00 27 JUDGMENT AND ORDER: by Judge Virginia A. Phillips against petitioner Michael Alvarado & denying and dismissing the habeas corpus petition [1-1] w/prej and terminating case (MD JS-6). (ENT 8-22-00) (cc: all counsel/ntc) (ab) [Entry date 08/22/00]

8/29/00 28 MINUTES: It is ord that the following docs lodged on 7/12/00 be returned to the Atty General for the State of California: Clerk's transcripts - 3 vols; Reporter's transcripts - 5 vols; Appellant Paul Soto's opening br; Appellant Michael Alvarado's opening br; Respondents bf; Appellants reply br; Appellants reply bf; mot to augment record on appeal; pet for rehearing of appellant Alvarado. by Magistrate Judge Charles F. Eick CR: N/A (shb) [Entry date 08/31/00]

09/11/00 29 NOTICE OF APPEAL by petitioner Michael Alvarado to 9th C/A from Dist. Court Jgm & Ord fld 8/8/00 & ent 8/22/00 [27-2] (cc: Michael Alvarado; St/Atty Gen) COA Pending. (pjap) [Entry date 09/15/00]

9/28/00 30 ORDER by Judge Virginia A. Phillips denying certificate of appealability. [29-1] (cc: all prtys) (fvap) [Entry date 10/10/00]

10/20/00 31 CERTIFICATE of Record Transmitted to USCA (cc: all parties) (pjap) [Entry date 10/20/00]

10/20/00 -- CLERK'S record on appeal transmitted to Circuit vols: 1 (pjap) [Entry date 10/20/00]

10/27/00 32 NOTIFICATION by Circuit Court of Appellate Docket Number 00-56770 (pjap) [Entry date 10/27/00]

12/12/00 33 ORDER FROM USCA: Req for cert of appealability gr w/ respect to following issues: whether statements made by deft were erroneously admitted by trial crt in violation of Miranda V. Arizona. Applnt gr lv to proceed in FP. Opening brief & excerpts of record due 2/1/01; ans brief due 3/1/01; optional reply brief due w/in 14 dys after svc of ans brief. Crt hereby sua sponte appoints cnsl. Cnsl will be apptd by sep ord. (00-56770) (wdc) (wdc) [Entry date 12/29/00]

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Docket as of October 8, 2003 11:15 p.m.

GENERAL DOCKET

US Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 00-56770 Filed: 10/24/00
Nsuit: 3530 Habeas corpus (Fed)
Alvarado v. Hickman
Appeal from: Central District of California, Riverside

Case type information:
1) prisoner petition
2) state
3) habeas corpus

Lower court information:

District: 0973-5 : CV-00-00326-VAP/E
presiding judge: Virginia A. Phillips, District Judge
Date Filed: 5/18/00
Date order/judgment: 8/8/00
Date NOA filed: 9/11/00

Fee status: in forma pauperis

Prior cases:
None

Current cases:
None

MICHAEL ALVARADO
Petitioner - Appellant

v.

R Q HICKMAN, WARDEN,
Acting Warden of Mule
Creek State Prison
Respondent - Appellee

Michael Alvarado
K-76657 C3-242UP
[COR LD NTC] [prs]
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300 S Spring St.
Los Angeles, CA 90013

MICHAEL ALVARADO

Petitioner - Appellant

v.

R Q HICKMAN, WARDEN, Acting Warden of
Mule Creek State Prison

Respondent - Appellee

00-56770 - Alvarado v. Hickman

10/24/00	Filed request for a certificate of appealability. Date COA denied in DC: 9/28/00 Record on Appeal included (y/n): y (STAFFATT) (bg)
10/24/00	Received District Court case file in 1 ORIG. VOLS. STATE LODGED DOCUMENTS RETURNED TO STATE ATTORNEY GENERAL ON 8/29/00. SEE DOCKET NO. 28. (STAFFATT) (bg)
10/24/00	Received certificate of record. RT filed in DC None requested. [00-56770] (bg)
11/6/00	Filed Michael Alvarado's request for certificate of appealability. served on 11/2/00 STAFF [00-56770] (vt)
12/6/00	Filed order (Michael D. HAWKINS, Sidney R. THOMAS, Marsha S. BERSON,): The request for a coa is granted with respect to the following issues: whether statements made by def were erroneously admitted by the trial court violation of Marianda v. Arizona, etc. Aplt is granted leave to proceed in forma pauperis. The opening brief and excerpts are due Feb.1, 2001; the answering brief is due March 1, 2001; the optional reply brief is due within 14 days after

service of the answering brief. The court hereby sua sponte appoints counsel. Counsel will be appointed by separate order. The Clerk shall serve a copy of this order by facsimile transmission on Maria E. Stratton, FPD, etc., who will locate appointed counsel. The district court shall provede this court with the name and address of appointed counsel within 14 days of locating counsel. [00-56770] (vt)

12/6/00 Fax Maria Stratton, FPD order dated 12/6/00 [00-56770] (vt)

1/25/01 Received copy of District Court order filed on 1/18/01 appoint Tara K. Allen, Esq. counsel of record. (Filed by Magistrate) [00-56770] (vt)

2/15/01 Filed motion & order: (Deputy Clerk: tah/PROMO) the aplt's motion to reset the briefing schedule is granted. etc. The opening brief and excerpts of record are due March 8, 2001, the answering brief is due April 9, 2001, and the optional reply brief is due 14 days from service of the answering brief. (Motion recvd 2/1/01) [00-56770] (vt)

2/28/01 Filed motion & order: (Deputy Clerk: tag/PROMO) The aplt's motion for an ext of time in which to file the opening brief is granted. The opening brief is due April 9, 2001. The answering brief is due May 9, 2001. The optional reply brief is due 14 days form service of the answering brief. (Motion recvd 2/23/01) [00-56770] (vt)

3/30/01 Filed motion & order: (Deputy Clerk: tah/PROMO) The aplt's motion for a second ext of time in which to file the opening brief is granted. The opening brief is due May 7, 2001. In view of the lengthy ext of time granted by

way of this order and the previous order, any further request for an ext of time to file this brief is disfavored. The answering brief is due June 6, 2001. The optional reply brief is due 14 days from service of the answering brief. (Motion recvd 3/27/01) [00-56770] (vt)

5/9/01 Filed original and 15 copies Appellant Michael Alvarado opening brief (Informal: no) 19 pages and five excerpts of record in 01 volumes; served on 5/7/01 [00-56770] (gail)

5/30/01 14 day oral extension by phone of time to file Appellee's brief. [00-56770] appellee's brief due 6/20/01; the optional reply brief is due 14 days from service of the answering brief. (cg)

6/21/01 Filed original and 15 copies appellee R Q Hickman's 23 pages brief and 5 supplemental excerpts of record in 3 volumes; served on 6/19/01 [00-56770] (ba)

7/6/01 14 day oral extension by phone of time file Appellant's reply brief. [00-56770] appellants' reply brief due 7/30/01 (cg)

7/16/01 Calendar check performed [00-56770] (th)

7/17/01 FILED CERTIFIED RECORD ON APPEAL; 1 CLERK'S RECORD. (ORIGINAL) [00-56770] (sd)

8/1/01 Filed original and 15 copies Michael Alvarado reply brief, (Informal: no) 7 pages; served on 7/30/01 PANEL (vt)

8/6/01 Screening letter sent. [00-56770] (th)

9/10/01 SUBMITTED TO SCREENING PANEL 331. (Oral) [00-56770] [00-56770] (th)

9/21/01	Removed from screening calendar. Parties notified. [00-56770] [00-56770] (th)
10/7/01	Calendar check performed [00-56770] (aw)
10/25/01	Calendar materials being prepared. [00-56770] [00-56770] (rei)
10/30/01	CALENDARED: PAS. Jan 14, 2002 1:30 PM Courtroom 1 [00-56770] (rei)
11/2/01	Received letter from pro se dated 10/29/01 re: req for status of cs (sent public dkt to Aplt) CASEFILE (gail)
1/14/02	ARGUED AND SUBMITTED TO Mary M. SCHROEDER, Richard D. Cudahy, M. M. McKEOWN [00-56770] (pg)
12/18/02	FILED OPINION: GRANTED We VACATE his state court conviction for second degree murder and attempted robbery. If a retrial of the def is in prospect, it shall be undertaken within 120 days of entry of this judgment. (Terminated on the Merits after Oral Hearing; Reversed; Written, Signed, Published. Mary M. SCHROEDER; Richard D. Cudahy, author; M. M. McKEOWN.) FILED AND ENTERED JUDGMENT. [00-56770] (vt)
12/23/02	Filed respondent's emergency motion for modification of opinion; served on 12/19/02. (PANEL) [00-56770] (ca)
12/31/02	Filed original and 50 copies Appellee R Q Hickman petition for panel rehearing and petition for rehearing en banc 18 p. pages., served on 12/30/02 PANEL & ALL ACTIVE JUDGES (vt)

1/10/03	Rec'd notice of change of address from Michael Alvarado for Appellant Michael Alvarado dated 1/7/03. (new address CA State Prison, Los Angeles County, 44750 60th Street, West, Lancaster, CA 93536) (vt)
1/21/03	Filed aplt's emergency motion for immediate release; and opposition to motion for modification of opinion; served on 01/20/03. (FED EX TO PANEL) [00-56770] [4633359] (dv)
1/24/03	Filed Appellee's opposition to motion for immediate release; reply to opposition to motion for modification of opinion; served on 1/23/03. (Fedex to PANEL) [00-56770] (ca)
2/11/03	FILED ORDER AND OPINION: Alvarado's petition for writ of habeas corpus is REVERSED. On remand, the district court shall enter judgment granting a conditional writ of habeas corpus directing that Alvarado be released form custody unless the state begins trial proceedings within 120 days of the issuancae of the mandate. (Terminated on the Merits after Oral Hearing; Reversed; Written, Signed, Published. Mary M. SCHROEDER; Richard D. Cudahy, author; M. M. McKEOWN.) (FILED AND ENTERED JUDGMENT. [00-56770] (vt)
2/12/03	Filed Deborah J. Chuang's motion to stay the mandate; served on 2/11/03 (AUTHOR) (vt)
3/28/03	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 02-1684 filed on 5/12/03. PANEL [00-56770] (vt)
5/16/03	Filed Deborah J. Chuang's motion to stay the mandate until the U.S. Supreme Court's final

	disposition of resp's petition for writ of certiorari. served on 5/15/03 PANEL (vt)
6/2/03	Filed order (Mary M. SCHROEDER, Richard D. Cudahy, M. M. McKEOWN): Respondent-Appellee's mtn for stay of the issuance of the mdt pending application for writ of cert is GRANTED. (cite) Therefore, it is ordered that the mdt is stayed pending the filing of the petition for writ of cert in the Supreme Ct. The stay shall continue until final dispo by the Supreme Ct. [00-56770] (je)
9/30/03	Recv'd petr's courtesy copy of his writ of certiorari filed in Supreme Court. case file [00-56770] (vt)
9/30/03	Rec'd courtsey copy of resp's brief in opposition to writ of certiorari. case file [00-56770] (vt)
10/6/03	Received notice from Supreme Court, petition for certiorari GRANTED on 9/30/03. Supreme Court No. 02-1684 (vt)

SUPREME COURT
FILED
DEC 15 1999

Second Appellate District, Division Four, No. B114847
S083052

IN THE SUPREME COURT OF CALIFORNIA
EN BANC

THE PEOPLE, Respondent

v.

PAUL R. SOTO Et Al., Appellants

Appellants' petition for review DENIED.

/s/
Chief Justice

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MICHAEL ALVARADO
Name
K-76657
Prison Identification/Booking No.
MULE CREEK STATE PRISON
Address or Place of Confinement

Note: It is your responsibility to notify the Clerk of Court in writing of any change of address.

Note: If represented by an attorney; his name, address & telephone number.

FILED
CLERK, U.S.
DISTRICT COURT
MAR 6 2000
CENTRAL
DISTRICT OF
CALIFORNIA

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MICHAEL ALVARADO FULL NAME (Include name under which you were convicted) Petitioner, v. R.Q. HICKMAN, Acting Warden of Mule Creek State Prison NAME OF WARDEN, SUPERINTENDENT, JAILOR OR AUTHORIZED PERSON having custody of petitioner Respondent.	CASE NO. CV 00-02340-RAP (E) To be supplied by the Clerk of the United States District Court PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY (28 U.S.C. § 2254) PLACE/COUNTY OF CONVICTION Los Angeles PREVIOUSLY FILED, RELATED CASES IN THIS DISTRICT COURT (LIST BY CASE NUMBER) CV _____ CV _____ CV _____ CV _____

(If petitioner is attacking a judgment which imposed a sentence to be served in the *future*, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the *future* under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. §2255, in the federal court which entered the judgment)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

INSTRUCTIONS - READ CAREFULLY

This petition shall be legibly handwritten or typewritten, and signed by the petitioner, under penalty of perjury. You must set forth CONCISELY the answer to each question in the proper space on the form. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury.

You must not attach separate pages to this petition, except that ONE separate additional page is permitted in answering Question No. 10.

Upon receipt of a fee of $5.00 your petition will be filed if it is in proper order.

If you are seeking leave to proceed in forma pauperis (without paying the $5.00 filing fee and other court costs), then you must also complete and execute the declaration on the last two pages, setting forth information which establishes your inability to pay the fees and costs of the proceedings or to give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal instruction complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution. If your prison account exceeds $25.00, you must pay the filing fee as required by the rule of the district court.

When the petition is completed, the original and two copies must be mailed to the Clerk of the United States District Court for the Central District of California, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012, ATTN: Intake/Docket Section.

Only one sentence, conviction or parole matter may be challenged in a single petition. If you challenge more than one, you must do so by separate petitions.

Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

PLEASE COMPLETE THE FOLLOWING: (Check appropriate number)

This petition concerns:

1. __X__ A conviction.

2. _____ A sentence.

3. _____ Jail or prison conditions.

4. _____ Prison discipline.

5. _____ A parole problem.

6. _____ Other.

(* See attached WRIT OF HABEAS CORPUS)

MICHAEL ALVARADO
K-76657
Mule Creek State Prison
P.O. Box 409000
Ione, CA 95640-9000

IN PRO PER

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MICHAEL ALVARADO, Petitioner, v. RODNEY HICKMAN, Acting Warden of Mule Creek State Prison Respondent.	)	Case No. _____ **PETITION FOR WRIT OF HABEAS CORPUS**

[i]

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[1]

MICHAEL ALVARADO
K-76657
Mule Creek State Prison
P.O. Box 409000
Ione, CA 95640-9000

IN PRO PER

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MICHAEL ALVARADO, Petitioner, v. RODNEY HICKMAN, Acting Warden of Mule Creek State Prison Respondent.	**PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner, MICHAEL ALVARADO, hereby petitions this Court for a writ of habeas corpus. As set forth herein, petitioner is being held under a conviction and sentence in violation of the United States Constitution.

[2]

JURISDICTIONAL ALLEGATIONS[1/]

1. Place of Detention: Mule Creek State Prison at Ione, California.

2. Conviction on which petition is based:

a. Nature of offenses involved:

Count I: second degree murder;

Count II: attempted robbery.

As to both counts, the jury also found true the allegation that a principal was armed with a firearm.

b. California Penal or other code sections:

Count I: Penal Code § 187;

Count II: Penal Code §§ 664/211;

Principal Armed Allegation: Penal Code § 12022(a)(1).

c. Name and location of sentencing court:

Los Angeles County Superior Court, Norwalk, California.

d. Case Number: VA 035109

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1. The jurisdictional allegations are set forth in a manner equivalent to this Court's standard form.

e. Date of Conviction: March 18, 1997;

f. Date of Sentence: November 14, 1997.

g. Length of Sentence for Each Count:

Count I: 15 years to life.

Count II: Stayed pursuant to Penal Code § 654.

Principal Armed Enhancement: One year permanently stayed.

h. Plea: Not guilty.

i. Kind of trial: Jury.

j. Did you testify at trial: Yes.

[3] 3. Did you appeal: Yes.

4. a. Name of Court: California Court of Appeal

b. Result: Affirmed.

c. Date of result: September 13, 1999.

d. Citation of Opinion: 74 Cal.App.4th 1099

e. Grounds raised (summarized):

1. Petitioner's statements to the police were obtained in violation of Miranda because petitioner was,

objectively, "in custody" at the time his statements were obtained;

2. The evidence was insufficient to establish that petitioner was an aider and abetter of the attempted robbery perpetrated by the co-defendant;

3. Petitioner's sentence of 15 years to life is disproportionate to his level of culpability and must be reduced further;

4. The trial court erred in denying three wheeler motions after the prosecutor used her peremptory challenges to exclude Hispanics and African-Americans from petitioner's jury;

5. Petitioner was deprived of a fair trial when the prosecutor repeatedly displayed a large revolver to the jury and elicited testimony about the revolver even though the prosecutor knew she could not connect the revolver to the case and had to move to withdraw the revolver and the testimony about the revolver.

5. Other petitions, applications, or motions: Yes.

6. a. Name of Court: Supreme Court of California

b. Nature of Proceeding: Petition for Review

Grounds raised (summarized):

[4] 1. Whether the trial court erred in ruling that it had no discretion to reduce a first degree felony murder conviction below second degree murder (to manslaughter) after it found the sentence for first degree felony murder to be cruel and unusual punishment under the circumstances;

2. Whether the appellate court erred in holding that the evidence in a case must establish the elements of a lesser offense of homicide before a trial court can reduce a first degree felony murder conviction that has yielded a sentence found to constitute cruel and unusual punishment pursuant to People v. Dillon (1983) 34 Cal.3d 441;

3. Whether the trial court and appellate court erred in finding that petitioner was not "in custody" for purposes of being advised of his Miranda rights even though petitioner,

a 17-year-old with no prior criminal history, was interrogated by a homicide detective at the sheriff's station for two hours.

d. Result: Denied.

e. Date of Result: December 14, 1999.

f. Citation of Result: Unpublished.

7. Was an evidentiary hearing held: No.

8. a. Name of Court: ⊘

9. Counsel:

a. Preliminary hearing: Joseph Gutierrez

b. Trial: Joseph Gutierrez.

c. Appeal: Tracy Dressner.

10. Petitioner presently has no appeal, petition, or other proceedings pending in any other court concerning these convictions.

[5]

STATEMENT OF FACTS

The Prosecution's Case

On September 22, 1995, Manuel Rivera lived next to a shopping mall in Santa Fe Springs.[2/] (RT 266.) Rivera spent the day with two friends, petitioner and Jason Romero, at Town Center, a local activity center for youths. (RT 266.) In the late afternoon, Rivera and petitioner went to Rivera's house. (RT 267.) That evening, a number of young people joined Rivera and petitioner at Rivera's house -- Jason, Valerie, Desmond, Paul Soto, Toni, and Sonja. (RT 269.) Soto was Valerie's boyfriend, and she invited him to Rivera's house. (RT 374, 375.) Over the course of several hours, the group (except for Valerie) drank beer and strawberry wine and smoked marijuana. (RT 269, 375, 391, 394.)

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2. The mall was approximately 34 feet from Rivera's backyard. (RT 324.) The mall included what Rivera described as a police substation (RT 324) but which a sheriff deputy described as a police services center run by public safety officials not police officers (RT 436).

Sometime after midnight, Rivera, petitioner, Jason, Desmond, Soto, and Valerie went over to the shopping mall to use the pay telephones because there was no telephone at Rivera's house.[3] (RT 270, 274.) An older truck driven by an older male pulled into the parking lot. (RT 275.) Valerie approached the truck and obtained a dollar from the man. (RT 276, 382.) The man then drove the truck over to a nearby dumpster and began collecting cardboard from the dumpster. (RT 277, 382.) Valerie and Desmond went into the donut shop where Valerie used the dollar to buy a cherry fruit punch. (RT [6] 384, 410.)

At that time, Soto was standing at the planter near the Jack's Market and near the phones. (RT 279.) Soto said to everyone but petitioner who was in the donut shop, "Let's jack." (RT 279.) Rivera assumed Soto was referring to stealing the man's truck. (RT 279.) No one said or did anything. (RT 280.)

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3. Valerie went to the pay phones about four times during the course of the night. (RT 376.) During one of those trips, she returned to the party with two friends, Selina and Regina. (RT 377.)

About two minutes later, after petitioner returned, Soto again said, "Let's jack." (RT 281.) Petitioner said, "Let's go."[4] (RT 283.) About 30 seconds passed and Soto and petitioner began walking towards the truck. (RT 284.) Soto said to petitioner, "I'll give you half." (RT 284.)

Soto walked in front of and to the side of petitioner and headed towards the driver's side of the truck.[5] (RT 285.) The driver of the truck was between the dumpster and the driver's side of his truck. (RT 288.) Petitioner walked towards the passenger door of the truck. (RT 286.) Soto and petitioner were walking at a regular pace.[6] (RT 286.) While petitioner was near the right rear truck tire, Soto appeared to be saying something to the man. (RT 289-230.) About 30 seconds later,

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4. Rivera subsequently retracted this part of his testimony during cross-examination. (RT 313.)

5. Valerie saw Soto and petitioner walk towards the truck but did not see where they went because she was busy talking to Desmond and a pillar was blocking her view. (RT 386, 423.) She noted that Soto and petitioner were not walking side by side. (RT 385.) When she stopped paying attention to Soto and petitioner, they were closer to the group then to the dumpster. (RT 400.)

6. Later, Rivera said Soto was walking faster and was about 9 feet ahead of petitioner. (RT 368.)

there was a gunshot. (RT 292, 388.) Valerie also heard a scream. (RT 388.) Everyone, including Soto and petitioner, [7] ran back to Rivera's house.[7/] (RT 293, 389, 419.)

When Soto returned to the house, he had blood on his shirt. (RT 294, 390, 415.) Soto went into Rivera's room and removed his shirt and went into the bathroom and cleaned up. (RT 294-295.) Soto left a black, long-barrelled gun in Rivera's room.[8/] (RT 296.) Soto told Rivera that he had demanded money and keys from the man and then shot the man when he did not comply.[9/] (RT 298.) Soto also said to Rivera and petitioner, "Don't say shit."[10/] (RT 301.) Rivera and petitioner

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7. According to Rivera, Desmond, Valerie, and Jason left the house about one minute later. (RT 350.) Valerie testified that Jason left the shopping center earlier, before the shooting. (RT 378.)

8. Rivera did not actually see Soto put the gun in his room but when he found the gun under his bed later that evening he assumed Soto put it there because nobody else had a gun. (RT 296, 299.) Later, after refreshing his memory with the transcripts of a police interview, Rivera remembered that he saw Soto holding the gun in the bedroom. (RT 302.)

9. Rivera initially denied that Soto said anything about the shooting but changed his testimony after refreshing his memory with a transcript of an earlier interview he had with the police. (RT 297.)

10. Rivera also had to refresh his memory to recall that Soto made this statement. (RT 300.)

went with Soto to hide the gun at a park.[11/] (RT 303.) Rivera opined that a gun marked as Exhibit 3 looked like the gun he helped hide with Soto and petitioner.[12/] (RT 364.)

At about 1:00 a.m. on September 23, 1995, a Norwalk sheriff [8] deputy responded to a call of a possible assault with a deadly weapon at the shopping center and found a man, later identified as Francisco Castaneda, face down surrounded by blood. (RT 430-433, 520.) Castaneda was approximately two feet west of the dumpster and 10-15 feet from the front corner of the truck. (RT 440-441.) Castaneda was 5'3" and weighed 160 pounds. (RT 475.) He died of a gunshot wound to the chest. (RT 476.) There was soot surrounding the entrance wound suggesting that the shot was fired at close range and was possibly a contact wound. (RT 477, 478.)

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11. Rivera was granted immunity from prosecution for his testimony. (RT 304.) Some time after the shooting, Rivera told Sonja, one of the girls who had been at his house that night, that he thought he would be arrested. (RT 324.)

12. The court eventually struck the gun marked as Exhibit 3 and all of the evidence regarding the gun because the prosecution could not link the gun to the case. (RT 511-517.) The testimony about the gun and subsequent striking of that testimony are described in more detail in Argument V, below.

The prosecution played tape-recorded excerpts from an interview petitioner had with the police on October 24, 1995. (RT 487-488; Exhibit 8.) On the tape, petitioner said he knew Soto was going to jack the man and take his truck so they could get home.[13/] (RT 609.) Just before the shooting incident, Soto sat down and pulled his gun out.[14/] (RT 628, 635.) Soto said something like, "So you want to go get a car" or "You want to find a ride home." (RT 620.) Soto said that out loud to the whole group; he did not address it to any particular person.[15/] (RT 621.) Nobody said anything. Soto said, "Who is going to go with me?" (RT 622.) Petitioner then walked over [9] to the

13. During cross-examination, petitioner explained that he told the detective that information based on what he was later told by other people. (RT 609.) Rivera told petitioner later that night that Soto had suggested that they take the truck because some of the group needed a ride home. (RT 617-618.) Although petitioner told the detective that he never discussed the incident with Rivera, petitioner had actually discussed the situation with Rivera that night and every time he saw Rivera after that. (RT 636, 655.)

14. During cross-examination, petitioner said he did not realize until much later that Soto was flashing a gun. (RT 629.)

15. During cross-examination, petitioner testified that Rivera told him all the information about what Soto said; petitioner did not hear it himself. (RT 619-620.)

truck and went by the passenger side of the truck.[16/] (RT 611.) When petitioner walked over there he had no intention to Soto hurting the man. (RT 612.) After Soto approached the driver's side, petitioner heard a shot, saw the man fall on the truck, and saw everyone else running so he ran. (RT 614, 644, 645.) Later that night, petitioner and Rivera hid Soto's gun in some bushes near a park. (RT 648.) The next morning, Desmond and a guy petitioner did not know came to Rivera's house to retrieve the gun. (RT 650.) Petitioner directed them to the location of the stashed gun. (RT 652.)

The prosecution also played a taped interview Soto had with the police on November 30, 1995. (RT 489; Exhibit 10.) In that tape, Soto said he was drunk when the shooting took place. (Exhibit 10.) Soto said he was trying to rob the man of his money when the gun went off accidentally. (Exhibit 10.)

16. During cross-examination, petitioner explained that he just walked by the truck on his way to the restaurant. (RT 611.) He and Soto happened to walk towards the truck at the same time by coincidence. (RT 613, 633.) He did not know what Soto was going to do. (RT 612.) He stopped by the truck and looked through the truck window but could not see what was going on. (RT 612.) He heard a shot and a scream and saw the man fall on the truck. (RT 614.) He figured the man was injured. (Rt 614.)

Soto did not recall anyone walking up to the truck with him nor did he recall asking anyone to go up to the truck with him. (Exhibit 10.)

The Defense Case

Rivera's inconsistencies

Petitioner and his co-defendant used their cross-examination of Rivera to highlight inconsistencies in Rivera's testimony:

Rivera admitted that he never actually heard petitioner say, [10] "Let's go." (RT 313, 316.) In fact, Rivera said he told petitioner's attorney and investigator during a previous interview that he could not be sure if petitioner actually said that. (RT 314.) Rivera was not sure whether petitioner said anything. (RT 320, 333.) On redirect examination, Rivera said he saw petitioner move his mouth after Soto said "Let's jack" but did not hear what petitioner said.[17/] (RT 356, 358.)

17. Rivera conceded that he had discussed the case with the prosecutor and the police at the lunch break before his redirect testimony. (RT 364.)

Rivera also admitted that he lied to the police about this case. (RT 310.) Rivera was interviewed by the police 4-5 times with each interview lasting 45-90 minutes. (RT 347-348.) On February 21, 1997, he told the police that only Soto and petitioner hid the gun. (RT 309, 365.) Rivera acknowledged that he never told anyone that Soto said, "Let's split it" until sometime after 1997. (RT 315.) During his interviews with the police, Rivera never said that Soto said "let's jack" two times. (RT 317, 365.) When Rivera first talked to the police he withheld the names of two of the people who attended the party at his house -- Sonja and Toni. (RT 324.) Rivera initially told the police that he heard the conversation at the dumpster, but he really did not hear anything.[18/] (RT 328.)

Rivera repeatedly vacillated about his whereabouts during the "let's jack" conversation.[19/] During cross-examination

18. Rivera explained during his redirect examination that he never lied to the police, he just withheld information because he was scared. (RT 353, 355.)

19. Valerie did not know where Rivera was during this time. (RT 396.)

Rivera [11] testified that he was on the telephone during the "let's jack" conversation. (RT 315, 334.) The telephones were in a recessed alcove around the corner from the donut store and the planter area of the shopping center where the "let's jack" conversation took place. (RT 317, 320, 339.) A person on the telephone could not see the donut shop/planter area. (RT 317, 320, 339.) Later, on redirect examination, Rivera said he was at the planter when the conversation occurred and during the time Soto and petitioner walked towards the truck. (RT 358.) On recross-examination, Rivera said he was at the telephones when he heard the conversation between Soto and petitioner as they walked towards the truck. (RT 367.) Later during recross, Rivera said he was by the planter and not by the telephones when Soto said "let's jack." (RT 371.) Rivera admitted that he had changed his testimony on that point since having a lunch meeting with the prosecutor and the police during a break in his testimony. (RT 371.)

Rivera also testified that he never saw a gun at any time that night prior to hearing the gunshot.[20] (RT 321, 330.) There had not been any conversation at his house about stealing someone's car or money.[21] (RT 321.) Petitioner lived about ½ mile from the shopping center. (RT 322.) Rivera knew that petitioner had previously walked from his home to the shopping center and to Town Center 1½ blocks from the shopping center. (RT 322.) Petitioner was planning on spending [12] the night at Rivera's house and had money with him that night. (RT 323.) Rivera knew petitioner for about two years and had never seen petitioner with Soto before that night.[22] (RT 323.) Rivera also did not know Soto prior to that night. (RT 324.)

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20. Valerie never saw a gun before the shooting either. (RT 392.)

21. Valerie also never heard any conversation about robbing or jacking anyone. (RT 393.) She was waiting at the shopping center for her ex-boyfriend to pick her up and give her a ride. (RT 394.) Soto presented the testimony of Desmond Pacheco who also said that he did not hear any discussion about a robbery or a shooting. 9RT 528.) Desmond was staying at his grandfather's house about one block from Rivera's house so he did not need a ride home that night. (RT 529.)

22. Valerie testified that she knew Soto since elementary school and knew petitioner for about one year. (RT 398.) That night was the first time Soto and petitioner had met. (RT 399.)

Rivera revealed that in the hours before the shooting, he drank two-40 ounce beers, drank wine and tequila, and smoked marijuana.[23] (RT 331, 336.) He described himself as somewhat stoned and drunk that night. (RT 330, 342.) Rivera was still drinking beer when he was on the telephone.[24] (RT 342.) Some of the other people at the people party, including Soto, were also drunk.[25] (RT 335.) Everyone was laughing and staggering when they went to the shopping center. (RT 335.) One guy even needed help walking. (RT 335.) On redirect examination, Rivera said that he, petitioner and Soto could talk, walk, and run that night without any problems. (RT 360-361.)

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23. Desmond recalled that the people at Rivera's house were drinking 40-ounce beers and tequila and smoking marijuana. (RT 523.) Desmond had been smoking marijuana all day. (RT 527.) By that night he was physically sick and staggering. (RT 525, 528.)

24. A 40-ounce beer was on top of one of the telephones when the crime scene photos were taken. (RT 338.) Rivera said that was his beer. (RT 373.)

25. Valerie did not believe that anyone at the party was drunk. (RT 391.)

Petitioner's Testimony

Petitioner was 17 years old in September 1995. (RT 548.) He lived about ½ mile from the shopping center and walked there often. (RT 549.) The mall contained fast food shops, clothing stores, cleaners, and a barber. (RT 554.) He had been going to that shopping [13] center all of his life. (RT 549.)

Petitioner walked to Rivera's house at about 3 or 4:00 p.m. on September 24, 1995. (RT 565.) He and Rivera walked to Town Center and met up with Jason. (RT 566.) They also saw Valerie, Desmond, Sonja and Toni at Town Center. (RT 567.) Eventually petitioner, Jason, and Rivera returned to Rivera's house. (RT 568.) Later, Valerie, Sonja, and Toni joined them. (RT 568.) The group gathered in Rivera's bedroom where they listened to the radio and drank 40-ounce beers, strawberry wine, and vodka or tequila. (RT 569.) Petitioner drank two 40-ounce beers and a ½ bottle of wine, plus smoked marijuana. (RT 571-572.) Petitioner felt drunk but was not staggering, slurring his speech, or out of control. (RT 573.)

People were coming and going to the pay telephones at the mall. (RT 573.) At one point, Valerie left and returned with Desmond and Soto, who petitioner met for the first time that night. (RT 551, 574, 580.) Two girls --Selina and Regina-- also joined the party which lasted 3-4- hours. (RT 578.) At no time during the party did petitioner see a gun or hear anyone talking about stealing a car. (RT 581.)

Around 11:00 p.m., the only people left at Rivera's house were petitioner, Rivera, Soto, Desmond, and Valerie. (RT 583.) Soto, Desmond, and Valerie left to use the phones and find a ride home. (RT 584.) Petitioner and Rivera got ready to go to bed.[26/] Rivera then decided to go to the phones one last time to call one of the girls who had left the party earlier. (RT 586.) At Rivera's request, [14] petitioner accompanied him back to the phones by the Jack's Market at the shopping center. (RT 586-587.)

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26. Petitioner was spending the night at Rivera's house as he had done a number of times before. (RT 566.)

While Rivera was on the phone, petitioner went into the donut store to buy a donut and cigarettes. (RT 587.) Petitioner then talked to Valerie for a few minutes on the sidewalk near a planter. (RT 591.) After that, petitioner wandered around the mall. (RT 592.) During his walk, he saw an old white truck at the dumpster. (RT 592.) As petitioner walked towards a Yoshinoya restaurant, he was between the truck and the restaurant for about 15-30 seconds. (RT 593.) At that point, petitioner heard a gunshot. (RT 593.)

Petitioner did not kill or rob Castaneda nor did he intend for Castaneda to be killed. (RT 550.) He never touched Castaneda, the truck, or the contents of the truck. (RT 550.) He never talked with a man near the truck, never demanded anything, and never made any menacing gestures. (RT 596.) He did not have a gun or bullets that day. (RT 550.) He did not encourage Soto. (RT 670.) He had no idea what was going on. (RT 670.)

[15]

CLAIM FOR RELIEF

I.

Petitioner'S STATEMENTS TO THE POLICE WERE OBTAINED IN VIOLATION OF MIRANDA BECAUSE Petitioner WAS, OBJECTIVELY, "IN CUSTODY" AT THE TIME OF HIS POLICE INTERROGATION YET HE WAS NOT GIVEN ANY MIRANDA ADVISEMENTS

Petitioner was convicted of murder almost entirely on the basis of statements he made to a homicide detective during two hours of questioning at the sheriff's station. Despite a multitude of factors that demonstrated that petitioner was, effectively, in custody during this questioning, petitioner was never advised of nor waived his Miranda rights. This gross violation of petitioner's Fifth Amendment right against self-incrimination and Sixth Amendment right to counsel should have rendered petitioner's statement inadmissible. The prosecution's use of

petitioner's statement requires a reversal of petitioner's murder conviction.

Petitioner raised this Miranda issue in his appeal. The state appellate court rejected the argument. In doing so, the appellate court relied almost exclusively on distinguishing the facts of petitioner's case with the facts in People v. Aguilera, 51 Cal.App.4th 1151 (1996), a case where a defendant successfully challenged on appeal the admission of his statements because they were obtained in violation of Miranda. The state court did not explicitly address petitioner's constitutional arguments.

The state court's "in custody" determination presents a mixed question of law and fact. (Thompson v. Keohane (1995) 516 U.S. 99 [16] [116 S.Ct. 457, 133 L.Ed.2d 383].) Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") which governs this case, a mixed question of law and fact is reviewed under the "unreasonable application prong" of 28 U.S.C. § 2254(d)(1). (Moore v. Calderon (9th Cir.) 108 F.3d 261, 265 n.3 [cert. denied, 521 U.S. 111 (1997)].) "The

Supreme Court need not have addressed a factually identical case, § 2254(d) only requires that the Supreme Court clearly determine the law." (Houston v. Roe (9th Cir. 1999) 177 F.3d 901, 905.) As discussed below, the state court's disposition was an unreasonable application of Miranda v. Arizona (1966) 384 U.S. 436 and the United States Supreme Court cases construing Miranda because the objective facts surrounding petitioner's interrogation demonstrate that a reasonable person would have believed that he was "in custody" during the critical moments of the interrogation.

A. The Circumstances Surrounding Petitioner's Interrogation by a Homicide Detective

Petitioner, a 17-year-old with no prior criminal history, was interviewed by a detective from the Los Angeles Sheriff's homicide division on October 24, 1995, about a month after the shooting. At the beginning of the taped interview, detective Comstock stated that she was interviewing petitioner at the Pico Rivera Sheriff's Station. (AI 1.)[27] Petitioner, who lived at

27. "AI" refers to Alvarado Interview and the number refers to the page number on the upper right hand corner of the transcript. The transcript is contained in the Motion to Augment filed in the Court of Appeal on September 11, 1998.

home with his parents, came to the station accompanied by his parents after the detective left a message at petitioner's parent's house stating that she needed to talk with him. (AI 1.) The detective then followed up that message by [17] calling petitioner's mother at her job at the Pico Rivera post office. (AI 1.) At the time of the interview, petitioner's parents were in the lobby of the sheriff's station and had given the detective permission to interview petitioner. (AI 1.) Petitioner and his parents had asked if his parents could be present for the interview, but the detective refused the request. (RT 9, 10.)

Petitioner's interview was the first time petitioner had ever been questioned by law enforcement. (RT 10, 552.) The detective questioned petitioner for two hours with the interview beginning at about 12:30 p.m. and concluding at about 2:30 p.m. (RT 498, 505, AI 1, 61.) The detective never told petitioner of his Miranda rights and petitioner never waived his

Miranda rights. (RT 501.) The detective did not believe that Miranda advisements were necessary. (RT 501.)

The interview with petitioner took place after the homicide detectives had conducted two interviews with Rivera as well as interviews with other witnesses. (RT 497.) Before the interview began, one of the detectives said within earshot of petitioner, something to the effect of "What do we have here; We are going to question a suspect." (RT 11.) For the first part of the interview, petitioner explained what he had been doing the day and evening of the shooting. (AI 2-19.) When petitioner concluded his description of the events of the day without mentioning the shooting, the following exchange took place:

Detective.: Okay. We did real good up until this point and everything you said it's pretty accurate till this point, except for you left out the shooting.

Petitioner: The shooting?

Detective: Uh huh, the shooting.

[18] Petitioner: Well I had never seen no shooting.

Detective: Well, I'm afraid you did.

Petitioner: I had never seen no shooting.

Detective: Well, I beg to differ with you. I've been told quite the opposite and we have witnesses that are saying quite the opposite.

Petitioner: That I had seen the shooting?

Detective: So why don't you take a big deep breath, like I told you before, the very best thing just to be honest. I don't have three notebooks full of notes because I haven't been talking to people and there's no way you can have this many people involved in something like that and people making deliveries, the delivery trucks making deliveries, people sitting in donut shops doing things and your group and everybody is not going to lie about this, okay? You can't have that many people get involved in a murder and expect that some of them aren't going to tell the truth, okay? Now granted, if it was maybe one person you might be able to keep your fingers crossed and say, god I hope he doesn't tell the truth, but the problem is that they have told the truth, okay? Now all I'm simply doing is giving you the opportunity to tell the truth and when we got that many people telling a story and all of a sudden you tell something way farfetched different.

Petitioner: I don't remember ever seeing the shooting. I never saw uh, where anyone was shot or --

I had know it was between the Yoshinoya, it was by the Yoshinoya and the dumpster.

Detective: What about the fact that you were standing there when it was decided to go up to the truck and you went up on the uh, passenger's side of the truck? Now I don't think you had any intention of anything happening and I don't think it was your intention at all for that man to get killed. I think that was the last thing you thought was going to happen. When it did happen, it was like, oh shoot. I want to get out of here. As a matter of fact, I'm so certain that you didn't want anything to happen when you went up to truck. You were kind of ducking behind the truck on that side, hiding, cause you didn't really want to be up there, but you were. I think maybe you weren't thinking clearly. I think maybe you made some bad decisions cause you weren't thinking [19] clearly that night and I know that's not what you intended to happen, by any means. You don't seem like that kind of a man. How much did you have to drink? (AI 19-21.)

* * * * *

Detective: . . . This is when it gets really tough. You've got to make some very tough decisions here about being honest and taking care of yourself and what's going to happen to you. This isn't the time that you need to worry about finking or ratting off or whatever you guys call it these days, on

your friends, okay? The people that shot that old man are not your friends. They put you in a bad position, so you don't owe them anything, okay? They got you in this mess, you don't owe them anything. The only person you owe anything to is yourself cause a friend would not have gotten you in that position and I know it's very difficult when it comes time to have to drop the dime on somebody and say, well it was so and so, but so and so that killed that man is not your friend and if that had been your parent, your mother, or your brother, or your sister, you would darn well want that person to go to jail cause no one has the right to take someone's life like that. You don't owe that person anything and I already know as much as I do and I probably know who was on that side of the truck, but what I'm looking for is to see if you'll tell the truth. I didn't get everyone's picture gathered up here just by accident. So was it Manny out there? Desmond? (AI 22.)

* * * * * *

Detective: . . . The main thing you need to be worried about is just taking care of yourself. You're nodding your head. Does that mean you understand?

Petitioner: Yes.

Detective: Okay. This is a not a pleasant thing for anybody. And that's when we sat down

> and I said all I wanted was the truth. That I pretty much already knew 95% of this and what I was hoping is that you would be honest. It's very difficult to admit when you've made a mistake like this, okay? And none of us like to have to admit when you made such a bad mistake. . . . So now let's start with the truth. . . . (AI 24-25.)

At this point, petitioner began making self-incriminating [20] statements about what took place just before and after the shooting. After petitioner concluded with his most self-incriminating statements, the detective asked petitioner about where he would be going after the interview:

> Detective: When we're done here today were you, you going to go back home or to your grandmother's or --
>
> Petitioner: I'll be going back home.
>
> Detective: You go to work today or --
>
> Petitioner: No I have to go to Town Center. . . . (AI 33.)

Petitioner was, in fact, allowed to go home after being questioned.[28/] (RT 501, AI 61.) Petitioner surrendered himself

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28. The most likely explanation for why petitioner was not arrested immediately after his interrogation was that the detective realized

to the sheriff's station two months later when the detective notified his parents that a warrant had issued for his arrest. (RT 501.)

B. Miranda Warnings Are Required When A Person Interrogated by the Police is "In Custody"

The appellate court's finding that under these circumstances any reasonable person would have felt he or she was free to leave is not an accurate depiction of real life and is contrary to numerous federal and state cases defining custody. It has long been the rule that "when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege . . [21] . ." (Miranda v. Arizona (1966) 384 U.S. 436, 478-479 [86 S.Ct.

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petitioner's statements would not be admissible against him because she had not given petitioner his Miranda rights. To cover this egregious violation of petitioner's constitutional rights, the detective let petitioner leave with his supportive parents, thus belatedly attempting to demonstrate that petitioner was not "in custody," while knowing with a high degree of probability that petitioner would be available through his parents to be arrested at a later date.

1602, 16 L.Ed.2d 694].) "The warning mandated by Miranda was meant to preserve the privilege during 'incommunicado interrogation of individuals in a police-dominated atmosphere.' [Citation omitted.] That atmosphere is said to generate 'inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely.'" (Illinois v. Perkins (1990) 496 U.S. 292, 296 [110 S.Ct. 2394, 110 L.Ed.2d 243] [quoting Miranda, supra, 384 U.S. at pp. 445, 467.) The purposes of the Miranda safeguards are "to ensure that the police do not coerce or trick captive suspects into confessing [and] to relieve the 'inherently compelling pressures' generated by the custodial setting itself, 'which work to undermine the individual's will to resist'. . . ." (Berkemer v. McCarty (1984) 468 U.S. 420, 433 [104 S.Ct. 3138, 82 L.Ed.2d 317] [footnotes omitted].)

"Custody" means "a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." (People v. Boyer (1989) 48 Cal.3d 247, 271 [citing California

v. Beheler (1983) 463 U.S. 1121, 1125 [103 S.Ct. 3517, 77 L.Ed.2d 1275].) The relevant inquiry in determining whether a person was in custody during police questioning is "whether a reasonable person in defendant's position would have felt he or she was in custody." (People v. Stansbury (1995) 9 Cal.4th 824, 830 [citing Berkemer, supra, 468 U.S. at 442].) To assess the question of custody, a reviewing court must consider the totality of the circumstances. (Boyer, supra, 48 Cal.3d at p. 272.)

Over time, the courts have considered numerous factors in assessing whether a person was "in custody" for Miranda purposes at [22] the time he was subjected to law enforcement questioning. These factors include:

> whether contact with law enforcement was initiated by the police or the person interrogated, and if by the police, whether the person voluntarily agreed to an interview; whether the express purpose of the interview was to question the person as a witness or a suspect; where the interview took place; whether

police informed the person that he or she was under arrest or in custody; whether they informed the person that he or she was free to terminate the interview and leave at any time and/or whether the person's conduct indicated an awareness of such freedom; whether there were restrictions on the person's freedom of movement during the interview; how long the interrogation lasted; how many police officers participated; whether they dominated and controlled the course of the interrogation; whether they manifested a belief that the person was culpable and they had evidence to prove it; whether the police were aggressive, confrontational, and/or accusatory; whether the police used interrogation techniques to pressure the suspect; and whether the person was arrested at the end of the interrogation. (People v. Aguilera (1996) 51 Cal.App.4th 1151, 1162.)

[23] No one factor is dispositive. (Boyer, supra, 48 Cal.3d at p. 272.) In petitioner's case, the balance of factors suggests strongly that petitioner was, from an objective standpoint, subject to such a restraint on his freedom that Miranda warnings were required prior to, or at least during, the interrogation.

C. The Totality of the Circumstances Suggest that Petitioner was in Custody for Miranda Purposes at the Time He was Interrogated by the Homicide Detective

Petitioner's situation is similar to the situation in Aguilera, supra. The defendant in Aguilera was one of a number of "Norteo" Hispanics who rode in caravan that was harassing "Sureo" Hispanics. (Aguilera, supra, 51 Cal.App.4th at pp. 1156-1157.) After several confrontations between the two groups at different locations, a man sitting in a car in a Sureo neighborhood was shot to death. (Id.) At trial, the prosecution admitted statements made by the defendant that acknowledged that he had participated in the caravan, that he was aware that one of the other caravan members had a gun, and he was present when the man was shot by a caravan member. (Id. at p. 1158.)

The defendant was convicted of several offenses including involuntary manslaughter. (Id. at p. 1155.)

On appeal, the defendant challenged the admission of his statements because they were involuntary and obtained in violation of Miranda. The investigating officers learned from interviewing another caravan member that the defendant had participated in the caravan. The officers went to the defendant's home and asked the defendant and his mother if the defendant would come to the police station to talk about the homicide. The officers said they would return the defendant to his house. The defendant and his mother agreed and the officers [24] brought the defendant to an interview room at the police station.

The subsequent interview lasted two hours. At the outset, one officer told the defendant he was not in custody, but she also explained that defendant would not return home until they were finished and the defendant had told the truth. The officers also told the defendant that they knew what had happened, they

knew who was present, and they knew who had done what. When the defendant denied any involvement, the officers accused him of lying, told him not to play games, and confronted him with evidence --both real and contrived-- of his involvement. When the defendant continued to deny his involvement, the officers said that the truth might exculpate him but continued lies would probably lead to murder charges. The officers told the defendant to think about all he would miss if he went to prison and used references to both the victim and the defendant's mother to urge him to tell the truth. The defendant maintained his denials and the officers maintained the pressure on the defendant. Eventually the defendant changed his story and made statements implicating himself in the events the night of the shooting. At the end, the officers returned the defendant to his home.

On appeal, the court found that the circumstances demonstrated that the defendant was in custody and should have been given Miranda advisements. (Aguilera, supra, 51

Cal.App.4th at pp. 1163-1164.) The court noted that although the officers said the defendant was not in custody, they also said the defendant would not be brought home until he told the truth. Based on the officers' repeated assertions that the defendant was lying, it would have appeared to the defendant that [25] he could not go home until he gave the "truth" the officers were seeking. (Id. at p. 1164.) The officers never told the defendant he was free to leave nor did the defendant's actions during the interview suggest he was aware of his personal rights. (Id.) Moreover, the officers were not interviewing the defendant merely as a witness. They made it clear that he was a potential suspect and that they had evidence to prove his involvement. (Id.)

In assessing the manner of interrogation, the Aguilera court observed, "courts consider highly significant whether the questioning was brief, polite, and courteous or lengthy, aggressive, confrontational, threatening, intimidating, and accusatory." (Id.) The court found that the defendant's "'tag

team' interrogation lasted two hours and was intense, persistent, aggressive, confrontational, accusatory, and, at times, threatening and intimidating. Although the officers' tactics and techniques do not appear unusual or unreasonable, we associate them with the full-blown interrogation of an arrestee, and except for a Miranda advisement, we cannot conceive how defendant's interrogation might have differed had he been under arrest." (Id.) The court concluded, based on the totality of the circumstances, that at least at the time the defendant began to change his story, if not before, a reasonable person would have felt deprived of his liberty in a significant way and was suffering a degree of restraint akin to an arrest. (Id. at p. 1165.)

The circumstances of petitioner's case are remarkably similar to the circumstance in Aguilera and lead to the same results. In petitioner's case, the detective contacted petitioner's parents with [26] whom petitioner was living and said that she needed to question petitioner. Petitioner was subsequently brought to the sheriff's station by his father. Thus, while

petitioner's presence was voluntarily in the sense that he came to the station with his parents rather than with law enforcement, a direct appeal to a minor's parents is more aptly described as "coercive" rather than "voluntary". In addition, petitioner was questioned in an interview room at the sheriff's station for two hours. Petitioner's parents who requested to be present at the interview were kept outside in the lobby for the duration of the interview. The tone of the questioning is best described as calmly accusatory. The detective was polite yet she made it abundantly clear that she knew petitioner was lying and that petitioner was more involved in the shooting then he initially admitted. Indeed, the detective told petitioner that she had been interviewing witnesses and knew all about what had taken place that night. A reasonable 17-year-old with no prior experience with being questioned by law enforcement would most likely believe that if he is at a police station being questioned by a police officer and the officer is stating repeatedly that he is lying and he is being cajoled to tell the truth, that he is not free to get

up and leave, at least not until he has satisfied the officer's desire for the "truth".

This belief was likely reinforced because the detective never told petitioner that he was being questioned as a witness, nor did she tell petitioner he was free to leave at any time. While the detective did ask petitioner where he was going after the interview, implying that petitioner would be free to leave, she did so only ***after*** petitioner had already offered up his most self-incriminating [27] statements. Similarly, the detective offered petitioner water, a bathroom break, a pager break only near the end of the interview, again after petitioner had made his most self-incriminating statements.[29/] (AI 51.)

The circumstances of petitioner's interrogation were markedly different than the circumstances in Oregon v. Mathiason (1977) 429 U.S. 492 [97 S.Ct. 711, 50 L.Ed.2d 714],

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29. Interestingly, during the tail end of the interview, the detective displayed her police gun for petitioner ostensibly so he could use her gun as a reference to estimate the relative size of Soto's gun. (AI 59.) A display of a gun, regardless of the circumstances, involves subtle and not so subtle reminders of the restraints on one's freedom.

which the trial court relied upon in denying petitioner's pretrial motion to suppress his statements. (RT 14-15.) In Mathiason, a police officer investigating a burglary asked Mathiason, a parolee, if they could meet and discuss something. (Mathiason, supra, 429 U.S. at p. 493.) Mathiason agreed and did not object to meeting the officer at the police station. When the two met, they shook hands and the officer told Mathiason he was not under arrest. (Id.) The officer told Mathiason that he wanted to talk with him about a burglary and that his truthfulness might be considered by the prosecutor or judge. (Id.) Mathiason admitted his guilt within the first five minutes of the meeting after the officer told Mathiason that they believed he was involved and told him, falsely, that his fingerprints were found at the scene. (Id.) Mathiason was subsequently Mirandized, made a taped statement, and was released to go home after being told that the officer was referring the case to the district attorney. (Id. at p. 494.)

In finding no Miranda violation, the Mathiason court emphasized that Mathiason came to the police station voluntarily and was told [28] immediately that he was not under arrest. (Id. at p. 495.) In addition, the interview lasted only a ½-hour and Mathiason was allowed to leave at the end. (Id.) The Court emphasized that the fact that a person is questioned at a police station or is questioned because he is a suspect does not signify restraint on a person's freedom. (Id.)

Petitioner's situation was different. Petitioner was a minor with no prior experience with the police. Mathiason was a parolee. Petitioner was brought to the sheriff's station by his parents after the homicide detective told his parents she needed to talk to him.[30/] Mathiason came to the police station after talking with the police and agreeing to do so. Petitioner was questioned for two hours. Mathiason admitted his guilt within five minutes and was released within 30 minutes. Petitioner denied any involvement in the shooting incident and was

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30. Petitioner's parents did not knew any details about why the detective needed to speak with appellant. (AI 53.)

subjected to a series of psychological ploys geared towards getting petitioner to "tell the truth." While petitioner sat there silently, the detective engaged in prolonged monologues about the "truth" and about how she already knew the details of petitioner's involvement.

Much like the defendant in Aguilera, supra, petitioner was essentially undergoing a post-arrest interrogation without the arrest. "[T]he very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals." (Miranda, supra, 384 U.S. at p. 455.) Nevertheless, at no point in the interrogation did the detective take "appropriate safeguards . . . to insure that [petitioner's] statements were truly the product of [29] free choice." (Miranda, supra, 384 U.S. at 1619.) At a minimum, the detective should have given petitioner Miranda warnings and obtained proper Miranda waivers before she began her incessant push for the "truth." The detective's failure to do so violated

petitioner's Fifth Amendment right not to incriminate himself and rendered his statements inadmissible.

D. The Erroneous Admission of Petitioner's Statements Was Highly Prejudicial

Without question, the admission of petitioner's statements to the homicide detective was critical to the prosecution's case. Even when the remaining evidence is examined in the light most favorable to the prosecution, there is virtually no evidence that petitioner aided and abetted a planned robbery. The remaining evidence demonstrated only that petitioner was on the passenger side of the truck at the time of the shooting. Petitioner's attempted robbery and murder convictions could not be sustained without petitioner's incriminating statements. The statements, however, were inadmissible. Accordingly, petitioner's convictions must be reversed.

I declare under the penalty of perjury that the foregoing is true and correct. Executed this 21 day of February, 2000 at Ione, California.

/s/
MICHAEL ALVARADO

[30]

PRAYER FOR RELIEF

Petitioner respectfully requests that this Court:

1. Issue a writ of habeas corpus to have petitioner brought before this Court so that he may be relieved from his unconstitutional confinement and restraint;

2. Conduct an evidentiary hearing at which proof may be offered concerning any contested allegations in this petition;

3. Order, upon final review of this petition, that petitioner's conviction and sentence be set aside;

4. Grant such order and further relief as the Court may find appropriate in the interests of justice.

Dated: February 21, 2000 Respectfully Submitted By:

/s/
MICHAEL ALVARADO

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TUESDAY, OCTOBER 24, 1995; 1230 HOURS

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STATEMENT OF **MICHAEL ALVARADO**

taken at Pico Rivera Sheriff's Station in the presence of Investigator **CHERYL COMSTOCK**, Los Angeles County Sheriff's Department, Homicide Bureau, Detective Division. Investigation under File No. 095-20808-0443-011. Transcribed by Cecilia Arzate, Word Processor II.

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COMSTOCK: Okay today's date is October 24th, 1995.

The time is approximately 1230 hours. This is Investigator Cheryl Comstock from the Sheriff's Homicide Bureau conducting an investigation under file number 095-20808-0443-011 and I'm currently at Pico Rivera Sheriff's Station interviewing Michael Alvarado, who was brought into the station after I left word at his family's house that I needed to speak with him. I then contacted his mother, Maria Alvarado, at her work, the post office in Pico Rivera and she had informed me that her husband, Mr. Alvarado was bringing to the Pico Rivera Sheriff's Station so I could interview him. Both Mr. and

Mrs. Alvarado are currently in the lobby at the Pico Rivera Sheriff's Station and have given permission for me to interview their son, Michael Alvarado. Alright Mike why don't you just, for the most part, try and just ignore the tape recorder and just talk in a normal voice --

A Okay.

Q -- and uh, just state your name for the record.

A My name is Michael Alvarado.

[2] Q Okay. Alright now before I turn the tape on, we talked just briefly about the murder at the Santa Fe Springs Mall, Promenade Mall, and and uh, basically what I'd like you to do, you know that that occurred on a uh, late Friday night, early Saturday morning, it was September the 23rd of this year and uh, do you remember that Friday?

A Yes I do.

Q Do you remember where, if you went to school that Friday?

A Uh, no I don't have sch -- I don't attend school. I have home studies at the time.

Q Okay do you know what you were doing that Friday, late afternoon?

A That Friday uh, I had come from Town Center Hall in Santa Fe Springs on Telegraph.

Q Who were you with?

A Uh, my friend Manuel Rivera.

Q Town Center Hall, what were you guys doing there?

A Yes, it's a, like a teen club and we go over there sometimes after school and play some video games and meet our friends and talk and re -- relax.

Q And you were there with uh --

A I was there with one of my friends and I met him right after school.

Q And his name is?

A Manuel Rivera.

Q Manuel?

A Yes.

[3] Q Rivera?

A Yes.

Q And how old is he?

A He's 17.

Q And what were you and he doing there at the mall?

A Oh just uh, at that time, it was maybe early afternoon and we were kind of, we were just playing pool uh, watching t.v. and then we had met up with another friends in there, just uh, talking, relaxing, 'kicking back' there and then we had left and went back to his house.

Q Were you drinking?

A Yes we were.

Q What were you drinking when you were at the mall?

A No, at -- not at the mall, when we had -- had gone back to his house.

Q So at the mall you were playing games, video games?

A Yes, we were playing pool.

Q And you didn't have anything to drink at the mall?

A Nah, uh, nothing.

Q What time did you leave the mall?

A Uhm, it was maybe around 6, a little before 6 maybe.

Q P.M.?

A Yes.

Q And who left?

A It was me and my -- Manuel and at that time, there was another, there was two females with us.

Q Know their names?

[4] A Yes, one of them is uh, Toni Brazulto or Brazu -- Brazulto --

Q Uh huh.

A -- and another girl was Sonia, Sonia, Sonia Rios, something like that.

Q Rios?

A Yes.

Q And whose friends were these?

A Well uhm, one of them was my friend and then the girl Toni was mine and my friend Manuel's friend and we were getting to know Sonia.

Q Okay. Let's see here. Is this here uh, one of the girls, Sonia?

A Yes.

Q Okay and is this --

A That's Manuel.

Q Okay, what I'm showing you is the uh, year book photographs of Sonia Rios and Manuel Rivera. Okay, okay and then what did the four of you do?

A Uh, we went to my friend Manuel's house, which is about maybe five minutes from Town Center. We, all of us had walked over --

Q Okay.

A -- and for a while we were just sitting in the house, watching t.v. and just sitting on the couch and everything like that.

Q Were his parents home, Manuel's parents?

[5] A Uh, I believe his mother was home at the time when we first gotten there.

Q And it was still just the four of you?

A Yes.

Q And then what happened?

A And then we were just re -- we were there about maybe the whole night and back and forth, using the phones well 'cause their phone uh, they ran the bill too high, so they didn't have -- their phone was disconnected, so we'd walk back and forth maybe about three, two or three times during the night, during the afternoon, going back and forth, using the phones to call whoever we wanted to call and then uh, later a couple more friends had came over.

Q Who was that?

A Uh, it was Valerie -- Valerie Garcia and I, the other, I know his first name, his name is Desmond --

Q Uh huh.

A -- and then there was another guy I had never seen before.

Q Okay, so time did these individuals show up?

A Uhm, must have been around 8:30, 8, 8:30, 9.

Q So it's Valerie Garcia uh, with someone named Desmond?

A Yes, I don't know their last names.

Q And another individual with them?

A Yes uh --

Q Did you --

A -- a --

[6] Q -- remember hearing his first name?

A -- a male. No, I don't hear any names for him?

Q Did you hear a nickname for him?

A No.

Q No?

A He was never -- I've never seen him before, I never met him before nothing. He was just somebody that the other two people had brought.

Q Let's see here. Is this the same Valerie Garcia you're speaking of?

A Yes.

Q Okay. I showed you a year -- a school book color photograph of a Valerie Garcia and then Desmond, not Desmond, excuse me uh, yeah Desmond uh, is this the individual?

A Yes that's him.

Q Okay I'm showing him a color Polaroid photograph that was taken uh, by myself of Desmond Pacheco. Is this the first time you had met Desmond?

A No, I've met him a couple of times before, but it was like uh, he was friends with maybe other people I was with at the time.

Q Okay and then, now what I'm showing you is a, we call it a mug -- mug uh, show-up folder and it's a number A for recording purposes here. I want you to just look at the photos of these individuals and see if you recognize any of the photographs of this -- uh, one of the individuals that you're speaking of, that was, other person with Valerie and Desmond, keeping in mind that the idea of looking at photographs is to [7] exonerate or to clear people of charges or to determine that they may be involved in something. Also keep in mind that the photograph maybe not be a new one, so it may look different. Like I'm sure when your hair is growed out, you look different, so a photo of you with hair versus now, with a shaved head, you look different, okay?

A Somewhere between these two, between the two and six.

Q Between two and six?

A Yes, because the -- the other one was wearing a hat. He had an all black hat on that night.

Q Okay, why don't we cover up the forehead of number six.

A Number six.

Q Okay, so after --

A That's it --

Q -- covering up the forehead of number two and six, you've determined that number six is the other individual? Okay. And you don't recall what he was introduced, as far as his name?

A Nah, I -- I was never introduced to him.

Q Okay. Okay. Alright so now around 8, 8:30, or 9 p.m., Valerie Garcia, Desmond, and an unknown male show up at the, at Manuel's house?

A Uh huh.

Q Were they invited over?

A Uh, I think Valerie was because it was Manuel's house, so he was really like telling people, you know, okay you can come whenever you can, and I -- I'm pretty sure that

[8] Valerie was and Manuel, Desmond, and -- yeah, well Manuel really never liked Desmond, so I don't think Desmond was invited and the -- the last man uh, I think they said he was walking home and they had met him or that they -- he had gone up with them and asked them where they were going, so he had tagged along with them.

Q Okay and this was the unknown male?

A Yes.

Q Okay so then all of you group up at Manuel's house and what happens then?

A Oh we were just uh, 'kicking back' in his room, listening to the radio, pretty much just, everybody's just sitting around.

Q Okay so we have, when you got there, who was there besides you and Manuel? Was there anyone else already there?

A It was me, Manuel uh, the two girls, Sonia and Toni, and I believe Manuel's little brothers were there now, they, but they were in and out of the house --

Q Okay.

A -- playing and so forth and uh, by that time I think Manuel's step-father was home or he had been somewhere else in the house --

Q Uh huh.

A -- and then it would be Valerie and then Desmond and then the other male and then it wasn't for a while that uh, another two girls arrived.

Q Okay. At --

A Uh --

[9] Q -- anytime was there another guy there?

A No, I remember been just -- just four guys.

Q Okay. Do you know an individual with the last name of uh, Romero uh, first name of Jason?

A Jason, yes. Well I don't remember him being there. I remember him going -- when -- when uh, after Valerie and all of them got there, they were going inside and Jason had come to the back gate --

Q Okay so --

A -- and then --

Q -- Jason comes in to play later on?

A Yes.

Q Okay. I - I just --

A I think he arrived after.

Q Okay, with -- when -- 'cause when so many people at the -- at the house, I know it's hard to keep 'em straight, that's why I wanted --

A Uh huh --

Q -- to make sure you weren't --

A -- I wasn't sure who had arrived because when Manuel, it was his house, so he was answering the doors and --

Q Okay. Alright so at this point, it's all of you with the exception of Jason 'kicking back' in Manuel's room --

A Yes.

Q -- and then what are you guys doing in Manuel's room?

A Well after a while somebody had borrowed money and then they went and bought drinks and then some people were [10] drinking and then we, all of us, maybe about half of us had drinks.

Q What kind of drinks?

A Uh, the Budweiser like 40 ounce and I think there was a couple of Boone's, you know the Strawberry Hill wine.

Q Okay and uh, liquor?

A At one time uh, I think it was Manuel who brought it in, it was uh, a little container, it was -- it was a Arrowhead bottle of water and uh, it was Vodka, but I think like one person took a drink out of that and nobody wanted to mess with that all night.

Q And it was in some kind of water bottle?

A It was an Arrowhead, a small kind of a plastic containers.

Q And then what happens?

A Uh, we were there for a while and then uh --

Q Any marijuana?

A No. I don't think there was any.

Q I mean it's okay. I mean it's, the worst of --

A There was -- there was a uh --

Q I, in other words, I don't condone it, but if we -- if you guys were smoking it, let's just be up front with it.

A -- there was a -- there was a 'bong' there --

Q Uh huh.

A -- but uh, I mean I -- all I remember it was just sitting there that -- that night.

Q Okay.

A They were smoking cigarettes.

[11] Q And the 'bong' is the pipe, black thing that you put the --

A Yes what you smoke --

Q Okay.

A -- marijuana.

Q So unknown if anybody was smoking marijuana?

A No, I don't remember seeing anybody even having any.

Q Okay. Okay then what happens?

A Uh, and then I believe there were two -- two other girls that come and they were Regina, I don't -- I don't know Regina's last name and uh, Salina and I think they come in Salina's car.

Q Uhm, okay. Uhm, showing you another group of year book photos here, is this Salina here?

A Yes.

Q Okay. And Regina I do not have a picture of her, but it was Regina and Salina?

A Yes.

Q About what time?

A They -- they were the latest ones all night, but I'm not sure what time they had gotten there.

Q Uh, could you give me an approximation?

A Maybe uh, 10, 9:30, 10. I think they had gotten out of work a little while before that, come over and stop by.

Q And you said you thought they were in Salina's car?

A Yes I think they were in Sali -- they came in Salina's car.

Q Were you -- are you sure of that or is that just a --

[12] A No, well --

Q -- possibility?

A -- 'cause Salina's the driver, I don't think Regina has a license or a car.

Q But you didn't see how they arrived?

A No.

Q Alright and then what happened?

A Uh, we were all there for a while and everybody got -- started getting bored, so uhm, for the -- the main part of the group uh, Valerie and Desmond and the -- the other male and uh, Gina and Salina, this was later, this was maybe 11, 12 and uhm, I think Valerie had to use the phone uh, just Salina and

Gina had left and Desmond and the rest of them had stayed, but they all walked to the phone and so --

Q Do you know where Salina and, when you -- you say Gina you mean Regina?

A -- Regina.

Q Do you know where Salina and Regina went when you said they left?

A I think they went home because when they left there, I didn't walk them out or anything. When they left, I'm assuming that they just went home.

Q Okay, go ahead.

A And uh, the girls had went to the phone and the -- the guys wanted to go with them and uhm, Desmond and Sonia were in and out of the house maybe a couple of times, walking around and --

Q Were they with each other that night?

[13] A I have no idea.

Q So Desmond and Sonia were in and out of the -- the house?

A Yes, maybe like once, twice, they went for a walk and I believe it was either Regina, one of the girls had gotten paged, a couple of them that gotten paged, so they went to go use the phone at Jax Market and they were out there for a while.

Q Which girls got paged?

A Uh, I believe it was Valerie and Regina.

Q Okay.

A And they had left to the phones at Jax Market --

Q Okay.

A -- and the rest of us were still inside the house.

Q Okay then what happened?

A Uh, I believe at that time, that's when uh, Salina and Regina had left because they never made it back to the house and Valerie and Desmond and the, everybody had come back to the house and everybody was talking about leaving and all, going home and --

Q So Valerie, Desmond came back, but Regina and Salina did not?

A No, I don't remember them coming back.

Q How about Sonia, did she come back with Desmond?

A Yes she -- she finally came back.

Q But Salina and Regina did not?

A No, I don't -- I don't remember them coming back after -- after a while.

[14] Q Okay.

A And then the -- the rest of us we were just inside the room and there's really nothing to do uhm, and then it got -- it got a little later and everybody had to find a way to get home and -- and uh, so -- everybody started going back to the phones. The -- the male that had -- that was -- that I didn't know and Desmond and Valerie and they had all went back to the phone and there was me, Manuel, Sonia, and Toni, I believe we're still at the house and we were just uh, doing anything, cleaning up and just getting ready to go to bed and uhm, we had gone back

and then I believe Toni and Sonia they had went to Sonia's house, well they were going to walk, then they got a ride home from Manuel's uncle, way down there, maybe around 11:30, 12, 12:30 and he had come in a -- in his Honda. I --

Q Did he --

A -- I don't know where he was coming from though.

Q What time was it when he took Sonia --

A When he took --

Q -- and Toni home?

A -- them, maybe around 12:30 I think.

Q And his name is?

A Uh, I only know him by his first name and that's Alex.

Q And that's Manuel's uncle?

A Yes.

Q So around 12:30 a.m., Manuel's uncle, Alex, drove Toni and Sonia home?

A Yes.

[15] Q Did anyone else go with them?

A Manuel, Manuel went with them.

Q Alright. And then what happens?

A And I stayed at the house and uh, all the remainders of the people who were there, we were all waiting at the house because Manuel had asked me not to leave them there. I wanted to go home, but Manuel had asked me not to leave the people at -- at his house when he wasn't there, so the rest of us stayed in the room and Manuel got back, they left to the phone and Manuel --

Q Hold on a second, excuse me. Okay, so it's you and who else was there with you while Manuel is taking --

A There was --

Q -- the girls home?

A -- me and uh, Valerie had come back to see if any -- if any of us knew a way she could get home uh, I believe Desmond came back with her and uh, the unknown male was like by the back gate in the backyard.

Q And how about uh, Jason?

A Jason had left -- Jason had left early. He was on uh, I think his parents put him on restriction so he was -- he left early. He left -- he came maybe 8, 8:30, was there for maybe about a half hour, an hour and then he had walked home and we -- we were waiting in the room for Manuel to come back. It took Manuel maybe about 20 minutes, 25 minutes to drop both girls off, one in Whittier and one in -- in Santa Fe Springs.

Q Uh huh.

[16] A So he came back uh, the other people finally had left. Me and Manuel started cleaning then Manuel wanted to go call Toni, the one -- the other females that was there earlier that night.

Q So what were Valerie and Desmond and this unknown male doing while you and Manuel were cleaning up the room?

A Oh, well while we were cleaning up, they -- that's when they decided to leave. They were going to go call uh, somebody's friends for a ride or to see how they could get home.

Q So the others decided to leave and go call for a ride home?

A Yes.

Q Do you know who they were going to call?

A No I don't. They left -- they just said they were going to go use the phone and try to find a ride home.

Q Alright.

A And me and Manuel stayed at the house. After a while, I guess, we had changed and everything and we went back to the phone and uh --

Q Why did you change?

A Oh, we just put on like shorts or something and then 'cause we were -- we didn't know if we were going to go back out, so and then we got dressed again, put on our pants whatever and then we went back to the phone and Manuel -- Manuel was going to call Toni and then we had seen Valerie, Desmond, and other male there gain and they was -- they were stranded right there by the donut shop.

[17] Q So after the group left, leaving just you and Manuel, you changed into more casual clothes --

A Yes --

Q -- 'cause you were going to stay in?

A -- we're like uh, yes. I had finally decided just to spend the night.

Q Was it your bed clothes, what you would have slept in?

A Nah, I just had a pair of shorts.

Q But then Manuel decided he wanted to call Toni?

A Yes, he -- he wanted to call Toni.

Q So you put your pants back on and what'd you do?

A And then we walked out of the back of his house and walked by the cleaners and KFC and went around the corner to use the phones at Jax.

Q So when you got to the pay phones, what happened?

A Uhm, well we were using -- well Manuel was using the phone and we were just right there and I was waiting for

him. He stays on the phone for a while and uh, I had seen the other male, Desmond, and Valerie by the donut shop and --

Q So --

A -- they were just stranded there.

Q -- when you two walked up, Valerie, Desmond, and the unknown male were hanging around the donut shop?

A Yeah, they were by uh, they were all sitting down, they were, Valerie was -- they were all waiting for a ride, a way to get home, when we had got there, they had asked me uh, if we knew a way to get home and everything like that.

[18] Q Don't they all live within walking distance of there?

A I believe Valerie does, maybe she could walk home within 15, 20 minutes uh, Desmond leaves -- Desmond lives maybe about five, 10 minutes away, but I don't know his purpose for still being there and the other male, I -- I have no idea where he lives or anything, if he lives close enough to walk.

Q And they were sitting by the donut shop?

A Yes, by, close to the phones, by the donut shop, in between the market and the donut shop, there's a little planter right there and they were sitting on the railing.

Q Okay go ahead, then what happens?

A And uh, Manuel had got off the phone --

Q So Manuel did call Toni?

A Yes, I -- I -- I'm pretty sure he called Toni because when he went to the phone I looked for something else to do 'cause he's on the phone for a while, so I was talking to Valerie and Desmond.

Q So you think he called Toni?

A Uh huh. I -- well I wasn't too sure when -- who he -- who he had actually called, but when we were in the house, I believe he wanted to call Toni.

Q Then what happened?

A Then uh, Manuel got off the phone and then we were all talking maybe for a couple of minutes or so uh, the uh, the

rest of them had walked back, they all started going back to Manuel's house.

Q So then Manuel got off the phone, did he group up with you and the other three people?

[19] A Yeah, we were all kind of like around, close to each other, talking and everything.

Q And where were you standing around talking?

A Uh, I was closer by the phones and then we moved close by the, where they were sitting at, between the donut shop.

Q By that planter?

A Yes.

Q And then what happened?

A And then we -- we went back to Manuel's house after he got off the phone and me and Manuel were the last ones, we walked back, and the rest of the group, they went back to the house, through the back gate and then I had went back to the house and we were in the house maybe for about five, 10 minutes, and then Valerie and Desmond had left first, walking,

and then Paul, I think he went to the rest room and then he had left, walking out the front door and me and Manuel just stayed there and changed --

Q What'd you do after that?

A -- and then we had -- and then we just went to bed.

Q Okay. We did real good up until this point and everything you've said it's pretty accurate till this point, except for you left out the shooting.

A The shooting?

Q Uh huh, the shooting.

A Well I had never seen no shooting.

Q Well I'm afraid you did.

A I had never seen no shooting.

[20] Q Well I beg to differ with you. I've been told quite the opposite and we have witnesses that are saying quite the opposite.

A That I had seen the shooting?

Q So why don't you take a big deep breath, like I told you before, the very best thing just to be honest. I don't have three notebooks full of notes because I haven't been talking to people and there's no way you could have this many people involved in something like that and people making deliveries did uh, the delivery trucks making deliveries, people sitting in donut shops doing things and your group and everybody is not going to lie about this, okay? You can't have that many people get involved in a murder and expect that some of them aren't going to tell the truth, okay? Now granted if it was maybe one person, you might be able to keep your fingers crossed and say, god I hope he doesn't tell the truth, but the problem is is that they have tell the truth, okay? Now all I'm simply doing is giving you the opportunity to tell the truth and when we got that many people telling a story and all of a sudden you tell something way far fetched different.

A I don't remember ever seeing the shooting. I never saw uh, where anybody was shot or -- I had know it was

between the Yoshinoya -- it was by Yoshinoya and the dumpster -- and the dumpster.

Q How about uh, the fact that you were standing there when it was decided to go up to the truck and you went up on the uh, passenger's side of the truck? Now I don't think you had any intention of anything happening and I don't think it [21] was your intention at all for that man to get killed. I think that was the last thing you thought was going to happen. When it did happen, it was like, oh shoot. I want to get out of here. As a matter of fact I'm so certain that you didn't want anything to happen when you went up to truck. You were kind of ducking behind the truck on that side, hiding, 'cause you didn't really want to be up there, but you were. I think maybe you weren't thinking clearly. I think maybe you made some bad decisions 'cause you weren't thinking clearly that night and I know that's not what you intended to happen, by any means, 'cause you don't seem like that kind of a man. How much did you have to drink?

A A little 40.

Q A little 40?

A A little 40 and then some of the Strawberry Hill.

Q Were you a little 'buzzed'?

A A little bit.

Q You look kind of stupid, not really sure what you were doing?

A No, I wasn't -- I wasn't, anything stupid or I was 'buzzed' and had the giggles and all that, but --

Q The only thing I want to be clear of, is who the uh, person on the driver's side of the truck was. I know it wasn't you. You didn't kill that old man, did you?

A Nah uh.

Q So now what we need to do is clear up whose on the other side of the truck. So the choices are Valerie, Desmond, [22] Manny, or the unknown male, 'cause I know you were on the passenger side, ducking down.

A I never really saw what happened on -- on the other side of the car.

Q That's 'cause you were ducking down, but you know darn well who was on the other side. This is when it gets really tough. You got to make some very tough decisions here about being honest and taking care of yourself and what's going to happen to you. This isn't the time that you need to worry about thinking or 'ratting off' or whatever you guys call it these days, on your friends, okay? The people that shot that old man are not your friends. They put you in a bad position, so you don't owe them anything, okay? They got you in this mess, you don't owe them anything. The only person you owe anything to is yourself 'cause a friend would not have gotten you in that position and I know it's very difficult when it comes time to have to 'drop the dime' on somebody and say, well it was so and so, but so and so that killed that man is not your friend and if that had been your parent, your mother, or your brother, or your sister, you would darn well want that person to go to jail 'cause no one

has the right to take someone's life like that and you don't owe that person anything and I already know as much as I do and I probably know who was on that side of the truck, but what I'm looking for is to see if you'll tell the truth. I didn't get everybody's picture gathered up here just by accident. So was it Manny out there? Desmond?

A No.

[23] Q The unknown male? Was it the unknown male?

A (Unint.)

Q Was it this guy here, number six? Do you know him? Has he threatened you?

A No.

Q What do you owe this individual then?

A Nothing.

Q Why would you want to protect him? Or is this --

A I'm not protecting that I want to do for him, just --

Q You don't want to have to admit the truth about you being out there?

A No, I was up there and I was in the side of the truck.

Q Then why are we finding it so difficult to protect a guy that you don't even know? Is it 'cause you don't want to get 'snitch jacket'? You're nodding your head, that means no I guess?

A Yeah.

Q Then -- then what is -- what is it? I would just like to know why you're --

A A different gang.

Q He's from 'Rivera' right and you're from 'Los Nietos'?

A Yes.

Q Has his gang threatened you?

A No.

Q Have you had any problems with gangs since then?

[24] A We don't get along. We haven't gotten along since then, even before that.

Q Well --

A It's just -- it's not 'cause I have -- it's not even the two different gangs, it's just -- just, I don't know.

Q Well this is not a gang situation. This is not 'Los Nietos' versus 'Rivera' and one of the guys from the other gang gets killed by the other guy, okay? This is something even more serious, not that that isn't serious, but this is a citizen who was minding his own business and gets killed, so uh, the fact that the guy in photograph six is from 'Rivera' gang uh, you just need to put that out of your mind and set it aside because that is not an issue here. It's not a problem. This isn't gang versus gang and I don't think he's in that good with the gang right now anyway, but that's, again, that's really not an issue you need to be worried about. The main thing you need to be worried about is just taking case of yourself. You're nodding your head, does that mean yes, you understand?

A Yes.

Q Okay. This is a not pleasant thing for anybody okay? And that's when I sat down and I told you that all I wanted was

the truth. That I pretty much already knew, 95% of it and what I was hoping is that you would be honest. It's very difficult to admit when you've made a mistake like this, okay? And none of us like to have to admit when you made such a bad mistake. You're nodding your head again, is that yes? Okay. The reason I'm saying that is because the tape recorder can't see you, [25] okay? So now let's start with the truth. We're doing very well up to the phone booth part and uhm, well all of the phone booths are the players still the same? It's you, Manuel, Desmond, Valerie, and this unknown male? Yes?

A Yes, it is, uh --

Q And Jason has honestly gone home?

A Jason had walked home earlier --

Q Okay.

A -- way earlier in the night.

Q Okay. And then what happens?

A Uhm, like I said earlier, they were 'hurting' for a ride home uh, I believe the unknown male, I -- I had never seen it all

night and I, nobody had told me and he never showed it, but he had gun on him. Uh, his idea was to -- uh, he had -- I don't know if he had any -- any intention to shoot the -- the man, but what he wanted was the truck. He wanted the man's truck, so they could get home and I have no idea, I have -- don't remember what I was thinking at the time to walk along the side of that truck, but when we went over there I had no intention of him hurting the man and, but we walked over there and I was just -- I was standing along the side of the truck and before I got -- when I got to a certain part of the truck I was looking through the window and so they were a little bit back and I couldn't really see what was going on and what I had guessed was the man had given uh, uh, put up a little fight or something, I -- I didn't even know if did that and then all I heard was the one shot and then I saw the man come to the car, after he was shot in the chest, he came to the car and hit the [26] car and I looked -- I looked back and everybody was already gone and running and I didn't know what to do. I was -- I was like well I had no

intention for that happening and I was like, well what do I do. I -- and then that's when I started going back to the house and then, then everybody else uhm, went into the house, Paul did to go use the rest room, and then he -- and then Valerie and Desmond had left first. They didn't even want to be anywhere around there. They left first, them two left out the front door, I think, walking and then the other male had followed, maybe five minutes behind and he took off walking and me and Manny let him out of the house and he took off and after that we never saw where he went.

Q When you said, you used the name 'Paul went into the bathroom,' --

A Uh huh.

Q -- was that the unknown male's name?

A That was him, the male.

Q Paul? You know his last name?

A Nah uh.

Q Do you know his street name, his gang name?

A I had kind of put two and two together when we were -- when we were at a park earlier that day and uh, there was him and another guy from 'Rivera' there and it said -- he's either uhm, 'Dopey' or 'Shy Boy.'

Q I believe his nickname is 'Dopey.'

A It was -- I know it's one of those two because --

Q 'Dopey' or 'Shy Boy'?

[27] A -- they were the only two from 'Rivera' there that day and -- and they had said two names from 'Rivera.'

Q Uh, when Paul went into the bathroom, why did he go in there?

A To wash off his hands and arm.

Q What did he have on him?

A The man's blood.

Q Did he have blood on his clothing?

A Uhm, I think he had blood on his shirt.

Q What did he do with that shirt?

A I believe he threw the shirt away. I believe the shirt was thrown away.

Q Do you know if he took it with him or threw it in the trash can at Manuel's or --

A No, he took it, I think we made him take it with him 'cause we don't want anything, his parents (unint.) --

Q When you first got back to Manuel's house, what did Paul do with the gun, when you first got into the bedroom?

A At first I think he hid it.

Q Where did he hide it?

A By, close by the dresser and then we had -- I had -- I think I had asked him or I don't know if Manuel had asked him first uh, where's the gun, where's the gun, and he said, I hid it, I hid it, it's by the dresser, over there by the bed, and this and that, so the gun -- the gun was taken and hidden at a park and then the next morning uhm, another one of his -- another one of 'Dopey's' 'homeboys' and Desmond had came back [28] and the 'Dop -- and then 'Dopey's' 'homeboy' went and got the gun.

Q Okay the following morning, being Saturday --

A Yes.

Q -- these people came to Manuel's house?

A Yes when me and Manuel were asleep.

Q You and Manuel were asleep and it was Desmond and who else?

A Desmond and uh, the other guy, I never seen him before --

Q But it was somebody --

A -- that's the first time I seen him.

Q -- from 'Rivera' gang?

A Yes.

Q And they came up to Manuel's door?

A Yes.

Q And did they talk to you guys?

A They talked to, I believe first Manuel's mother answered the door uh, Manuel -- Manuel then went -- they went and woke us up and said, there's somebody here at the door for

you. We went to the door uh, we told them where the gun was at and then they went and got the gun and then that was -- I haven't seen or heard of any -- I haven't seen or heard from uh, 'Dopey' or his 'homeboy' or Desmond or any of them.

Q Okay where was the gun?

A At uh, I think it's 'Little Lake,' the park uh --

Q Behind Santa Fe High School?

[29] A -- the school, no on the side, right there on the side of Santa Fe.

Q Yes.

A Uhm, by the church, right there.

Q Where, within the park?

A No, it was outside of it by the uhm, by the bushes, along the fence by, I think it was the front office.

Q And how do you know that's where it was?

A 'Cause we had taken it there.

Q Whose we?

A Me and Manuel.

Q What about Paul, what happened to him?

A He just -- he left.

Q He left the gun in the room?

A Uh huh.

Q He didn't take it with him?

A He left the gun at the house and then after he had walked out, we went to the room and me and Manuel were -- we were panicking, we didn't know what to do. We found the gun and then we -- and then we -- we're like, oh wow he left it, what do we do, do we -- I -- didn't know whether to keep it, inside here and then we just decided to get it out of the house.

Q Okay and Desmond, Desmond's a good friend of uh, Paul's?

A I don't know if they're good friends, but they were, see because when Valerie and Desmond came to the house uhm, they had, Paul had met up with them, Paul was walking home or [30] something and then he had met up with them and then he's -- he asked -- he cleared it with one of them, he said it's

okay if I go with you guys wherever you guys are going right now.

Q Okay well the reason I'm asking is -- is Desmond comes back the next day with a 'Rivera' gang member to go get the gun, so it would seem like Desmond's has a close connection with Paul.

A Well 'cause I know both of them, because Desmond when we were at the park earlier that day, that's how I found out that those two guys were from 'Rivera.' Desmond wasn't there with us and then, so I don't know how they met up with Desmond afterwards.

Q Is Desmond from 'Rivera'?

A No.

Q He's an associate?

A No. I -- I don't know if they have a relation or uh, relatives or --

Q Okay. And we're going to back track a little bit. We're up to the part when Manuel's on the pay phone with Toni, that's all pretty much straight, correct? Yes?

A Yes.

Q Okay and then Manuel gets off the phone and you guys are all sort of standing around, talking?

A Yeah, talking and just everybody's just thi -- trying to think of something to do and how to get home.

Q Okay. Did you go in the donut shop?

A No.

[31] Q How long after Manuel's off the phone, does Paul make the suggested about taking that truck?

A Maybe five, 10 minutes.

Q Okay. Do you recall anything happening prior to the pickup truck, that's what we're talking about, the pickup truck, right?

A Uh huh.

Q Prior to its stopping by the dumpster, do you recall it stopping before that and uh, Valerie contacting the man?

A I don't remember her talking to the man.

Q You don't remember her flagging him down, asking for some change or something?

A No. I just remember seeing him because I -- I never saw him which way I -- he came from the side and I never saw him and then he drove up on the side and then that's when they had -- that's when they had suggested it.

Q Okay so you didn't see Valerie --

A No, I don't -- I don't even remember Valerie flagging him down or asking him for change or anything.

Q Okay and I'm sorry, did you say you -- you did or did not go in the donut store and buy something?

A No, I don't never ever remember going -- entering the donut store.

Q Do you remember at anytime a small uh, well let me see, yeah do you remember a small Honda type car pulling up at the donut shop and talking to everybody?

A No. I remember a -- it had nothing to do with the, they didn't come and talk to us, but it was a -- a diesel truck [32] that had pulled in, a big rig and it pulled in by the donut shop.

Q And the diesel truck was there at the time of the shooting?

A Uh, I think he had pulled up just when they shot and then -- and then there was (unint.)

Q Okay. Okay, so after Manuel's off the phone for about five minutes?

A About five, 10 minutes.

Q What, if you remember, approximately what were Paul's words?

A Uhm, so do you want to go get a car or do you want -- do you want to find a ride home or --

Q And was he saying it to someone particular?

A Well he was saying that to, when he was saying it, he was saying it out loud and the group right there.

Q So he didn't say uh --

A No he --

Q -- Desmond or he didn't address it to anybody, just to the group?

A No, he said it to the -- yeah, to the group speaking out loud.

Q And then what was said?

A Uhm, and every -- and then I don't remember anybody's answers or I don't remember anybody answering like uh, if I remember correctly, everybody just stood like quiet, like oh well uh, I don't know uhm, and then we -- and then uhm, he had gone within uh, he never ask -- he never like, really asked me [33] just, you know, oh you want to go and then uhm, he's all, well are you going to go with me or -- who's going to go with me, who's going to go and watch out and, something like

that, and so I went and then that's when I went on the other side and he went to the driver.

Q When he made the statement about something to the effect of uh, you want to go get a car, you want a ride home, was he indicating in some manner the pickup truck?

A Yes because the -- the man in the -- the pickup truck was out of the car and sort of into the dumpster, getting off the -- the cardboards.

Q Was Paul looking in that direction or pointing at the pickup truck or --

A He was looking in that direction.

Q When we're done here today were you, you going to go back home or to your grandmother's or --

A I'll be going, back home.

Q You got to work today or --

A No, I have uh, I have to go to Town Center, the Town Center Hall.

Q What's going on there?

A Uh, I go there for uh, school credit.

Q Oh. What time do you have to be there?

A Uhm, you can go at anytime you want, but you have to put in, they give you a certain limit of hours you have to put in a week, you have to put in 12 hours, so we got to kind of make your schedule to make sure you got those 12 hours.

Q Okay.

[34] A You go in and sign in and sign out when you leave and come and go as you please (unint.)

Q How long had the truck been stopped in front of the dumpster when Paul said this?

A A minute or two.

Q Okay at what point did you see Paul with the gun?

A Uhm, when we had -- when he was sitting down at the very last minute, before he approached the truck. He had just went like that and he had like pulled it out of his pock -- I don't know if he pulled it out of his pocket or his pants and pulled it

like that and showed it and put it back, but then he had put it in his pocket.

Q Okay was he doing that with his right or left hand?

A He was sitting back and I was like in front of him, so he did it with his left hand, I believe.

Q That was just prior to walking up to the truck?

A Yes, so he had already -- he had it out and then his pockets like a -- it was ready now.

Q And you believe that was with his left hand?

A Yes.

Q And you think it was either from his pocket or his waistband or --

A Yes. When he had first brought it out, I don't know if it came from his pocket, his waistband, or his back, but when he put it back away, it was -- he put it in his pocket.

Q So did he have it out just like a second, just enough to flash it?

A He -- he just like, just enough to show.

[35] Q And you think he put the gun in his left pocket?

A Yes. When I was looking at him it was his, to his right, my right, so I was -- he was sitting down like that and he showed like this and I was standing up at him, looking down at him, so it was in his left.

Q Do you know what kind of gun it was?

A Uh, maybe a .38 or a .357.

Q Did you ever look at it later on to determine what kind it was?

A No, I -- when -- when we were taking the gun to hide or 'stash it' somewhere I just, I had it in my pocket.

Q What color was it?

A Uh, it was a black with a brown handle.

Q A revolver or automatic?

A A revolver.

Q Okay. Alright so and Paul makes this jester with the gun, puts it back and then what does Paul do?

A And then uh, he had gotten up and then he started going up ahead of me. He approached the car then I heard it around the side.

Q When Paul did this displaying of the gun uh, did Desmond see the gun?

A I don't know because when he showed the gun, I looked like down at the gun and then I looked away.

Q Do you remember where Desmond was standing?

A I believe he was standing to my right, over on the sidewalk, so --

Q How about --

[36] A -- I -- I did -- I don't know if he saw the gun.

Q -- how about Valerie?

A Valerie was to my right too, sitting down.

Q Do you know if she saw it?

A I have no idea because I had -- when -- when I looked down at the gun I didn't look to see like what else had seen it, I looked down to see what it was.

Q Do you know if Manuel saw it?

A I believe Manuel was still on my left side, a little bit back, leaning against the wall.

Q And then Paul got up and began walking toward the truck?

A Yes.

Q And what side did he approach on?

A On the driver's side.

Q And then what did you do?

A I just -- I approached the passenger's side and really stayed there.

Q What did you think Paul was going to do?

A Uh, at first I didn't -- I wasn't sure if he was going to pull up the gun as soon as he walked up or waited to see if the man gave him a fight or uhm, I was just thinking maybe he would scare him and -- and tell him, you know, just stay away and let -- I'm going to -- we take your car, but apparently he just ended up shooting him.

Q Did you hear what was said between the two of them?

A No.

Q Could hear if words were being said?

[37] A Uhm, not really, not with the diesel truck going in and I'm on my side wondering why I'm on the -- even on that side. I heard the -- the man, he was like, no like no and really trying to get uh, Paul uh, backed off a -- away from him and --

Q Could you hear Paul say anything?

A No. I don't remember him, Paul say anything.

Q So the man was saying something, he said no?

A No, like uhm, he was like -- he was frightened a -- a a couple of times you hear like a -- like a maybe a little scream.

Q And it was your impression that he was -- he was uh, what?

A My, it was my impression that Paul was threatening the man and it -- it took me maybe about 10, 15 seconds to realize that Paul had already had the gun out on him and the man was just scared for his life.

Q Okay and then you're standing where by the passenger side of the pickup truck?

A I was by the door, the -- the passenger door.

Q Were you standing up erect, were you --

A I was --

Q -- on your knees --

A -- some --

Q -- were you --

A -- I was at -- I was like up and down, like standing up straight and ducking a little bit.

Q Did you say anything to man?

[38] A No.

Q Did you say anything to the man?

A No.

Q Did you say anything to Paul?

A No I didn't.

Q Did you encourage Paul to do what he was doing?

A No I did not. I had no idea what was going on on the other side.

Q Let me check the tape here. Okay we've flipped over to side B on the tape and we're continue with this interview. The last thing you said you had no idea what was going on the other side. Could -- how well could you see?

A I'd -- I -- I never saw. They were not clear to the window where I could see through the driver's side or the passenger side window. They were behind, back a little bit and I could not see what was going on.

Q So they were standing back a little toward the rear of the pickup truck?

A No, they were just back where --

Q Just be --

A -- I could not -- I -- 'cause I was looking straight through both windows and they were back just where I couldn't see them.

Q So they would be like just behind the driver's side window?

A Yes.

Q Did you hear Paul demanding any money from the man?

[39] A No, I didn't hear Paul really saying anything. I hear the man uh, a couple of yells and then screaming and then I heard a gunshot and then I heard the man scream more and come towards to, the car.

Q And how many gunshots?

A One.

Q And when you say the man came close to the car, he --

A I meant he came, after he was shot, he came like in almost leaned or fell on the car or the truck.

Q And after he was shot, you said he screamed or hollered or what?

A Yes it was like a -- like a just like a real scream.

Q Could you tell at the time the man was shot, what direction he was facing, what he had been facing --

A He was uhm, like maybe side by side with the truck and Paul was in front of him like that.

Q So where would the man back have been to?

A He -- his back was kind of going towards the dumpster because he was kind of like, it seemed like he was backing, when he was shot, it seemed like he was kind of backing away or just took a couple of steps back, towards the dumpster, but he was never that far from the car though when he was shot and Paul took off running and the man, it seemed like if he had walked towards, closer to the car, maybe to lean on it.

Q And you couldn't tell whether there was struggle or not?

[40] A No, I don't think there's any struggle. I mean I couldn't hear like any noises that I would think there was a struggle or nothing.

Q At the time the shot, could you tell how close Paul was to the man?

A Uhm, maybe a foot or two, two feet away at least.

Q Okay, closer than what we are now?

A Uhm, about right here maybe, maybe a little bit closer.

Q Okay and we're sitting across the table and it's about a --

A Uhm --

Q -- about two and a half feet wide.

A -- two and a half feet.

Q So maybe they were about two feet?

A About two feet from each other.

Q Could you tell if Paul raised his right arm or left arm?

A No, I -- I couldn't see that.

Q So you could not see which arm Paul raised?

A No.

Q At the time that this is all going on, where's Desmond, Valerie, and Manuel?

A I assume they were still by the donut shop, still sitting or standing uhm, between the donut shop and the telephone of Jax. When we were -- when me and Paul were by the car, I -- I never looked back to see what they were doing.

Q Okay and after the shot what happened?

[41] A Uhm, it took me about a -- a good maybe 10, 15 seconds to realize what had happened and by the time I turned to look back at everybody, they were gone and running.

Q So then when you looked toward the, where the others --

A Were they were at --

Q -- they were all running?

A -- they were all gone.

Q And was Paul also running that direction?

A Yes.

Q So they were all running toward the Kentucky Fried Chicken?

A Yes and then they had turned the corner, around the cleaners.

Q And how far were you trailing behind?

A Oh uhm, I was maybe, they had turned the corner and I was still in front of Jax Market.

Q Were you running?

A At first -- at first and no I wasn't really running and then I -- I had seen everybody taking off and then I just started running.

Q Okay. I'm going to turn the tape off for just a moment. I need to take a uh -- uh, facility break. Okay the time's uh, I mean the tape's back on and we'll continue with the interview. Okay so let's see, we left off when they all ran at the corner, by the cleaners about this time, you're in front of Jax Market and then you weren't running at first, is that correct?

[42] A Yes.

Q And then when you saw the others running, you said you started running?

A Yes I did.

Q Okay and then what happened?

A Uhm, we had, when I had turned the corner, I went to turn the corner by the cleaners and started going to the house uh, when I got to the house Manuel was waiting at the gate and opened the gate for me and uh, we went in and by the time I went in, I went to the room and I believe Valerie and Desmond were going out of the room and then that's when they had walked and left and they left walking uh, Paul went to the rest -- Paul was in the rest room, washing up and everything like that uh, I -- I believe -- I, that he took the shirt with him and uh, he had another shirt with -- he had another shirt on and uh, he -- and then he took off walking.

Q So then you and Manuel entered the house at the same time?

A Well Manuel was already there before me, but he entered the -- he was in the backyard before me and then we entered the house at the same time.

Q Then he was holding the gate for you?

A Yes he was holding it.

Q Well then you actually walked into the house together?

A Yes.

Q And you went in through the back?

A Yes.

[43] Q Do you recall whether his mother said anything or father said anything to you at that time or to the group?

A No, they -- they has asked Manny uh, what's going on and uh, Manny said uh, nothing, everybody's just coming back inside and they're going to be leaving right now.

Q Was that Manuel's mom or dad?

A Manuel's mother.

Q And she asked what?

A What -- what was going on?

Q What did Manuel tell her?

A Nothing, that everybody was just uhm, going to be leaving right now.

Q Okay so then when you went into Manuel's bedroom, were Desmond and Valerie there?

A Yes and then when -- and then they had walked out of the room and walked out the front door and left.

Q So was it pretty much you entered the room when they went out?

A Yes, they were -- they were hurrying out.

Q And then is this when you saw that Paul was in the bathroom?

A Yes, I had --

Q Is --

A -- walked by the rest room, I just went into the room and I -- and uh, I had turned around to look through the room and I saw Paul in the rest room.

Q Was the door open?

A Yes it was.

[44] Q And what did you see Paul doing?

A Washing his hands.

Q And did you see something on his hands?

A Blood.

Q How did you feel about that?

A I turned away.

Q Were you upset?

A I was just, yeah well I was upset. Was -- I mean there was no need for him to do that.

Q Did he have blood on both hands or can you tell --

A I think he just had blood on his left hand.

Q Was he still wearing his shirt?

A Yes.

Q Where was the blood on his shirt?

A Uh, it was just like splat -- like almost splattered on his chest.

Q Splattered on the chest?

A Yes.

Q And was Paul still holding the gun at that time?

A No. By the time I got in the house he had already hid it and had went to the rest room.

Q And how do you know he'd already hid it?

A Well he didn't have it on him and then we were wondering, me and Manuel were wondering, where's the gun and he -- that's when we had told him, we has asked somebody had told us (unint.)

Q Who did the gun belong to?

A Paul.

[45] Q It wasn't your gun?

A No, yeah, well he -- I'm -- I'm assuming it belonged to him. He's came to the house with the gun and it was on him at the time.

Q You didn't come to the house with the gun?

A No, I didn't.

Q So if someone said it did, they're wrong?

A Yes they are.

Q So when you asked him where the gun was, he said what?

A Uhm, it was by the bed, underneath the bed, by the dresser.

Q Was under the bed?

A Yes, underneath the bed, by the dresser.

Q And then what happened?

A Uhm, then Paul had gotten -- he had gotten another shirt and he had put that one on, he took, I'm pretty -- I'm thinking that he took his with him because --

Q Where did he get --

A -- he said he was going to get rid of it.

Q -- the other shirt?

A Uhm, somewhere in the room.

Q What kind of shirt was it that (unint.)?

A Just a -- a white one.

Q And he got it somewhere in the room?

A Yes.

Q Okay and then his shirt with the blood on it, what do you think happened to it?

[46] A Uhm, I think he took it with him.

Q Okay, so you didn't see the shirt later on in Manuel's bedroom?

A No. After -- after uh, he took his shirt off, I never saw it again.

Q Okay. And then what happened?

A Uhm, Paul went out the front door, walked through the house, went out the front door and I never saw him again after that.

Q Have you spoken to him since then?

A No.

Q You haven't seen him on the streets?

A No.

Q Okay so that leaves you and Manuel in the bedroom.

A Uh huh.

Q Does Manuel's mother come in the room?

A She had asked what happened and Manuel -- we -- we still said, no, and then uh --

Q This is after -- shortly after Paul left or --

A Yes.

Q So she came -- was the gun still there?

A No, uh, no after -- after Paul had left we waited and me and Manuel were in the room thinking what we're going to do with the gun and uh, and then we took off. We -- and then we 'stashed it' in the park, in the bushes, well by the park, outside of the school.

Q How long did you wait?

A Uhm, maybe at least five minutes.

[47] Q Why didn't you or Paul -- I mean, excuse me, why didn't you or Manuel tell Paul to take his gun with him?

A We just weren't even thinking about telling him just get out of the house. He -- 'cause he don't -- he was going to be walking and he didn't want to be walking with the gun on the street like that and then, so he left it at the house and he's all,

well I'll have -- I'll have uhm, somebody come pick it up in the morning.

Q That was what he said before he left?

A Yes.

Q And did -- did he tell you or you just assumed it?

A No he told us. He told me.

Q He -- did he tell you, I don't want to be walking with a gun on me or --

A No he just said, well I'll leave it here and then (unint.) and them had said no, I guess, (unint.), so he left it and he said, well uh, I'll have somebody come by in the morning to pick it up.

Q And you're sure it wasn't Manuel's gun?

A No, no it wasn't.

Q And then when he said, he'd come tomorrow and have somebody pick up the gun, neither you nor Manuel responded?

A No, we're just like, well okay, but we didn't want to keep the gun in the house, so --

Q So that's when you guys took the gun?

A Yes, we got the gun and went and took it to, by the school.

Q Did the gun have blood on it?

[48] A No.

Q Who picked up the gun?

A I did.

Q Where did you put it?

A In my pocket.

Q You ever handled a gun before?

A Uhm, like uh, sh -- like uh, shooting out in the range and in the desert, like that, but not uh, in the street or anything.

Q When you put it in your pocket and then you and Manuel walked to where?

A To uh, the elementary school next to Santa Fe, I'm not sure the name, I think it's a, like uh, Little Lake.

Q The elementary school near Santa Fe High?

A Right next to Santa Fe.

Q And then where did you put it?

A I hid it in the bushes. I believe close, by the office.

Q Do you know if uh, the gun is still there?

A No they came back and -- and uh, well they had come down the house and then I went over there and uh, I told them it's over there by the -- by, in front of the school, by the bushes.

Q Okay, so then you and Manuel, what'd you do after that?

A Uh, after uh --

Q Hiding the gun?

[49] A -- after hiding the gun we went back to the house and just uh, changed and went to sleep.

Q Were the police uh, around at that time?

A Yes they were.

Q Were they -- did you see them?

A Yes.

Q Did they stop you?

A No they didn't.

Q. When you went back to Manuel's house, did his mother talk to you guys at that time?

A Uh, she had wondered what happened, but Manuel was real, he didn't really want to tell them.

Q So then you guys go to bed?

A Yes.

Q Did you talk about what happened?

A No we just changed and 'knocked out.'

Q Okay then the next day is Saturday.

A Uh huh.

Q These -- when do these people show up at Manuel's house?

A It was maybe like 6, 6, 6:30 in the morning.

Q And who shows up?

A Uhm, the -- there was the other guy from 'Rivera' and --

Q -- Desmond?

A -- Desmond.

Q Desmond?

A Yes.

[50] Q And what was the guy from 'Rivera's' uh, gang name?

A That one was uhm, 'Shy Boy.'

Q 'Shy Boy'?

A Yeah.

Q He was the one that you had seen earlier that day in the park with --

A -- at the park.

Q -- Paul?

A Yes.

Q 'Cause Paul's uh, name is 'Dopey'.

A 'Dopey' and yeah, so the other one, it'd be 'Shy Boy.'

Q And he's also from 'Rivera'?

A Yeah.

Q Okay. What park was it that you had seen 'Shy Boy' and uh, Paul at the day before?

A Uh, Santa Fe Springs Park.

Q And that was earlier on that Friday, right?

A Yes.

Q Okay and then what did -- who spoke, Desmond or 'Shy Boy'?

A Uhm, Desmond I believe.

Q What did he say?

A He had asked where's -- where's the gun at and I told him at the park, hidden in the bushes and I knew he wouldn't be able to find it, so he asked me to walk with him.

Q So then now, when you took him to the gun, who picked the gun up?

[51] A Uhm, 'Shy Boy.'

Q You know I keep hearing your pager beep, do you need to use the phone or --

A No, no.

Q 'Cause if you want to, you can use the phone to make a --

A No, I don't need it.

Q Okay. And we should be done here pretty quick. I'll get you out of here, so you can go about your activities. Okay so 'Shy Boy' picked up the gun?

A Yeah.

Q And where did he put it?

A He put it in his pocket.

Q I don't have a key, so I don't want that door to close on us and lock. Alright and then after he put the gun in his pocket uh --

A I walked back to Manuel's and they went their own way.

Q Okay. Did they say anything to you?

A No.

Q Did they --

A After that, that was it. That was the last --

Q -- did they give --

A -- time I saw --

Q -- give you any, excuse me, I'm sorry to interrupt you, did they give you any uh, did they make any threats or any statements to you about saying anything or --

A No.

[52] Q Did they say where Paul was at that time?

A Nah uh.

Q No? Okay. Do you need a uh, rest room break or water break or anything?

A No.

Q Okay. If you do, just say so and we'll stop. Okay then you went back to Manuel's and did you go back to bed?

A No after that we stayed up and then uh, I changed. I went back to my clothes and we waited, we were at Manuel's house for a while, watching t.v. or what -- whatever and then I went to Jax Market and -- and called for a ride.

Q What time was that?

A Maybe 10, 10:30, between 10:30 and 11.

Q Did you see any activity uhm, going on at that time?

A No.

Q The uh, police weren't still there?

A No.

Q And you went to the phone and who did you get to pick you up?

A Uh, my father picked me up that morning, not that morning, that morning I had -- I had ended up walking home, they were mad because uh, I never got a chance to call the night before.

Q Okay so did you go to the pay phones?

A Yes.

Q And then you were told, no?

A No, that uh, they were mad and they didn't want to pick me up, so I had to walk.

[53] Q Alright. Have you told your parents anything about this?

A No, they don't know anything about it.

Q Have you talked to Manuel since this incident?

A Yes I -- Manuel I see -- well after that I haven't seen Manuel for a while. I see him every once in a while now. Uh, me and him were like best friends at the school.

Q Have you talked to Manuel about what happened since that night?

A No. No, we never talk about it.

Q How about Jason?

A No.

Q Do you guys talk about what happened?

A We'd never talked about what happened. I mean I've seen them 'cause these -- these are people I see at Town Center.

Q How about Valerie? Have you talked to Valerie about what happened?

A Valerie, no I haven't talked to her about what happened, but she said that -- that she had talked to -- I -- I don't know if it was you or uh, the police and that was about it.

Q And Desmond, have you spoke to Desmond?

A I haven't seen Desmond since then.

Q You haven't seen Paul since then?

A No. I haven't seen any of the three males since then --

[54] Q Okay. Okay what I want to go through now is uh, clothing, the best that you can recall that everyone's wearing that evening. Uh, we'll start with what you were wearing.

A I had on tan pants.

Q Were they baggy?

A Yes.

Q When you say tan, is it a light tan?

A Like a beige, like a --

Q Okay, so it would be a light color. Okay and what kind of shirt?

A I had a white, may -- in the beginning of the night, I had a Raiders jersey on and then later in the night I had -- I was wearing a white shirt.

Q Okay earlier you were wearing a Raiders jersey?

A Yes.

Q What did it look like?

A It was just a -- a black -- it was just a black jersey with a gray number.

Q So earlier in the evening you had on a black --

A Yeah.

Q -- is it a jersey?

A Yes.

Q And it's Raiders?

A Yes it was.

Q And what color markings are on it?

A Uh, gray, gray numbering.

Q When did you take that off?

[55] A Uhm, I believe I took it off before we had went back to the phones, before the shooting.

Q So as far as you recall you did not have it on at the time of the shooting?

A No. At the time of the shooting I think I had it over my shoulder, but I really don't remember having it on the time of the shooting.

Q And what was the shirt that you had underneath that?

A It was just a white shirt.

Q A T-shirt or --

A Yes, like a -- a white T-shirt, just what I have on me.

Q Normal size or baggy or --

A No, it was a normal size.

Q And do you recall what kind of shoes?

A Uhm, I had uh, sandals on.

Q What color?

A Black.

Q Did you have a baseball cap?

A No.

Q Okay and what was Manuel wearing?

A Manuel I think had on uh, blue baggy pants and I don't know, I think he, at the time of the shooting I think he had a -- a tank top on like a white undershirt, tank top.

Q Do you remember Manuel wearing a jersey that night?

A I think he had a Emmett Smith jersey, a white one with a blue -- with blue lettering, I think he was wearing that like earlier.

[56] Q But at the time of the shooting he didn't have that on?

A I -- I think and at the time of the shooting I think he just had his tank top. I don't know if he was wearing a jersey.

Q Okay. Do you recall what kind of shoes Manuel had on?

A He just wore plain white, like Nike shoes.

Q Did he have on a hat?

A No.

Q Okay and how about Desmond?

A Uhm, I think he had on brown or gray pants, baggy, brown or gay -- gray, gray baggy pants and uh, like a tan shirt.

Q Uh, a dress shirt or --

A It was --

Q -- pullover --

A -- it was like a button up, but uh, it had no -- no collar. It wasn't a collar shirt, it was a regular T-shirt button up and I think he had black shoes on.

Q Black shoes? Did he have a cap on?

A No.

Q And Paul?

A Uh, gray baggy pants.

Q Dark gray or light gray?

A Uhm, it looked like a dark gray and he had a -- a white sweat shirt and a -- no, he had a white shirt and I believe he had a -- he had a sweat shirt with him.

[57] Q A white shirt, what kind of shirt was it?

A It was just a -- a plain undershirt like a normal size.

Q It have sleeves on it or --

A Yes, it just a short sleeve. It was a short sleeve --

Q When you're saying --

A -- white undershirt, like -- like this one.

Q T-shirt?

A Yes.

Q And that white sweat shirt was -- did he have that with him at the time of the shooting?

A Uhm, no. I don't -- I don't remember the color of the sweat shirt. I think it was either a black or blue, at the time of the shooting he wasn't wearing that because I remember the blood got on his -- on his shirt, so he didn't have the sweat shirt on.

Q And you don't remember at what point he took it off?

A No, when w were at the hou -- when we were still at the house, but I don't remember what -- what time it is and he had on a uh, the black hat, a plain black hat, no lettering, no -- no logo or nothing.

Q When you say hat, you mean baseball cap?

A Yes, a baseball cap.

Q When you guys were walking to the pay phones uh, do you recall at anytime seeing Paul take his T-shirt off and just go bare chested?

[58] A Uhmmm, no because we went -- they were already there at the pay phones when we -- when me and Manuel went, so I don't know if he took off his shirt or not.

Q Okay. When the gun was in Paul's pocket, was it concealed in the pocket or did he need to have his shirt to cover the gun in the pocket?

A No, it -- it looked like it was all concealed in the pocket.

Q Okay. Uhm, and do you recall what kind of shoes Paul had on?

A Uhm, no I don't.

Q I think I forgot to ask earlier on the gun, do you know what length barrel that gun was?

A No I don't. It uh, I'm -- I'm pretty sure it was a .357.

Q Okay.

A It was a --

Q You've seen the -- the --

A -- pretty big one.

Q -- smaller barrel guns like uh, what the ladies carry in their purse or uhm --

A It was maybe about, the barrel was about that long maybe.

Q What was the total length of the gun?

A The total length of the gun was like that. I believe it was -- I'm pretty sure it was .357. That was a pretty big gun.

[59] Q Okay so what you just described could have been either a for or a six inch barrel? Was it -- I'm showing him my 9mm Beretta, was it approximately this length or longer?

A Uhm, I think it was a little bit longer.

Q Okay, slightly longer and the barrel, like my Beretta?

A Yes.

Q Okay. And the only reason I showed you that is I'm just trying to get a --

A Yes.

Q -- feel for the size of the gun.

A Okay.

Q Okay now Valerie, what was Valerie wearing?

A Valerie had on I believe a black sweat shirt and blue pants, regular size pants.

Q Do you recall if she had her hair up or down?

A I believe she had her hair up.

Q You recall her shoes?

A Uhm, they were like uh, tanish, orange boots.

Q And the pants, were they normal length pants?

A Yes.

Q Okay. Uh, on this guy, 'Shy Boy,' is that someone that you'd recognize if you saw him again?

A Uhm, maybe 'cause I was -- when I saw him at the park, I never really saw him that good at that park and then uhm,

in the morning I saw him maybe once or twice because I had to hurry up and get dressed so I could -- so I could show him where it was at.

[60] Q Right.

A So I remember, the one thing I remember the most was he had a shaved head with uh, a little bit of hair, more than mine, and he had a like a little tail I think from the back, from -- not from the very back, like a 'duck tail' in the bottom, from about the middle back, probably like in the middle, a tail maybe about two inches.

Q Okay. About how old is 'Shy Boy'

A Uhm, uh, about maybe 17, 18 (unint.)

Q Hispanic?

A Yes.

Q About how tall?

A Uhm, maybe about 5'4", 5'5", 5'7".

Q And how much do you think he weighs?

A Uhm, 140, 150.

Q And his skin color?

A Uh, it was -- it was like a tanish/brown.

Q So when you say --

A He wasn't too dark.

Q So it'd be a medium or light?

A Uh, maybe a, in between a medium and a light.

Q Any facial hair?

A No.

Q And uh, what was he wearing?

A Uhm, I think he had on black pants, black baggy pants, the morn -- in the morning he had black baggy pants and a, I don't remember what kind of shirt he had on.

Q Were he and Desmond on foot?

[61] A Yes.

Q Okay anything else that I have not asked you, that you think you ought to tell me about now?

A No, that's -- that's the whole night and morning.

Q And Manuel, eh, was definitely not up at the truck?

A Definitely. They were all back, by the donut shop.

Q Okay. And aside from the obvious, why haven't you come forward to the authorities about what happened?

A I have no idea.

Q Afraid?

A More, well not -- afraid partly, but uhm, more like wanted to forget that it happened.

Q Feel bad about what happened?

A Yes.

Q Okay we don't have anything else and what I'm going to do is go ahead uhm, escort you out to the lobby where your parents are and then you guys can go about whatever activities you have and uh, we'll conclude the interview and the time is approximately 1430 hours.

(INTERVIEW TERMINATED)

LODGED
CLERK, U.S. DISTRICT COURT
JUN 12 2000
CENTRAL DISTRICT
OF CALIFORNIA

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF-RESPONDENT,	)	NO. VA035109
VS.	)	
PAUL RAYMOND SOTO, DEFENDANT-APPELLANT.	)	

APPEAL FROM THE SUPERIOR COURT OF
LOS ANGELES COUNTY
HONORABLE PHILIP H. HICKOK, JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL

APPEARANCES:

FOR PLAINTIFF-RESPONDENT:	DAN E. LUNGREN STATE ATTORNEY GENERAL 300 SPRING STREET NORTH TOWER, SUITE 5001 LOS ANGELES, CALIFORNIA 90013
FOR THE DEFENDANT-APPELLANT:	IN PROPRIA PERSONA

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PAGES 1 THROUGH
242, INCL.

CHRISTIE SCHIZAS, CSR 8790

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT
NO. SO-E HON. PHILIP H. HICKOK, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF-RESPONDENT,	)	NO. VA035109
VS.	)	
PAUL RAYMOND SOTO, DEFENDANT-APPELLANT.	)	

REPORTER'S TRANSCRIPT ON APPEAL
MARCH 5, 6, 7, 1997

APPEARANCES:

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CHRISTIE SCHIZAS, CSR #8790

[1]

NORWALK, CALIFORNIA;

WEDNESDAY, MARCH 5, 1997

P.M. SESSION

DEPARTMENT SE-E HON. PHILIP H. HICKOK, JUDGE

APPEARANCES:

DEFENDANT, PAUL SOTO, WITH HIS COUNSEL, BARRY BERNSTEIN, PRIVATE COUNSEL; DEFENDANT, MICHAEL ALVARADO, WITH HIS COUNSEL, JOSEPH A. GUTIERREZ, PRIVATE COUNSEL; CAROLINE NAKAKI, DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY, REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA.

(CHRISTIE SCHIZAS, OFFICIAL REPORTER.)

THE COURT: WE HAVE THE PEOPLE OF THE STATE OF CALIFORNIA VERSUS SOTO AND

ALVARADO. THIS CASE HAS BEEN SENT DOWN HERE FOR TRIAL; IT'S A 9 OF 10 TODAY.

BOTH DEFENDANTS ARE PRESENT IN THE BUILDING; HOWEVER, THEY ARE NOT IN THE COURTROOM.

MS. NAKAKI: CAROLINE NAKAKI FOR THE PEOPLE.

MR. BERNSTEIN: BARRY BERNSTEIN FOR PAUL SOTO.

MR. GUTIERREZ: JOSEPH GUTIERREZ ON BEHALF OF MICHAEL ALVARADO.

THE COURT: LET THE RECORD REFLECT WE HAVE BEEN TALKING BRIEFLY OFF THE RECORD ABOUT LOGISTICS. I'LL READ ALL OF THE MOTIONS AND POINTS AND AUTHORITIES THAT HAVE BEEN SUBMITTED WITH REGARD TO SUPPRESSION OF STATEMENTS, TO SEVERING AND TO PROCEEDING WITH THE USE OF A STATEMENT AGAINST ONE OR

BOTH OF THE DEFENDANTS IN THIS MATTER. AND [2] ALSO THAT WOULD -- ALSO, IT MAY INVOLVE MY LISTENING TO A TAPE, AND IT MAY ALSO INVOLVE MY READING ONE OR MORE TRANSCRIPTS.

DO ME A FAVOR, COUNSEL, AND MAKE SURE EVERYTHING I HAVE HERE AND EVERYTHING THAT HAS BEEN FILED -- BECAUSE I DON'T SEE THE TRANSCRIPT THE PEOPLE HAVE BEEN REFERRING TO HERE --

MR. BERNSTEIN: YOUR HONOR, I REALIZE I FILED THE SALIENT PAGE WHERE HE INVOKES HIS RIGHTS.

THE COURT: DO I NEED ANYTHING IN ADDITION TO THAT?

MR. BERNSTEIN: NOT AS FAR AS I'M CONCERNED.

THE COURT: I'LL REVIEW THAT. IF THERE'S ANYTHING IN ADDITION TO THE WRITTEN INFORMATION I HAVE HERE, PRESENT THAT TO ME

SOME DAY IN THE NEAR FUTURE, BUT NOT THIS AFTERNOON.

WE'LL HAVE A JURY PANEL AVAILABLE TOMORROW MORNING AT 9 O'CLOCK; 60 WILL COME DOWN HERE. THEY WILL BE ON THEIR FOURTH DAY OF JURY SERVICE. IT COULD WELL BE THAT WE'LL HAVE, OUT OF THOSE 60, WE'LL HAVE 40 OR MORE THAT HAVE UNLIMITED DAYS OF JURY SERVICE. THERE'S NO TELLING. IT'S JUST HARD TO SAY WHETHER WE WILL BE ABLE TO RUN OUT OR USE THEM ALL. THAT'S ABOUT THE BEST WE CAN DO.

THE JURY PERSONNEL IS GOING TO SEE WHETHER WE CAN HAVE 60 MORE IN THE AFTERNOON. OTHERWISE, WE WILL GET 60 ON FRIDAY. IF WE DON'T GET A JURY PANEL TOMORROW AFTERNOON, WE CAN DO ALL THE MOTIONS TOMORROW AFTERNOON. IF WE GET A JURY TOMORROW AFTERNOON, I'LL TIME-QUALIFY

THEM THROUGH MARCH THE 21ST, AND THEN FRIDAY IS THE OPPORTUNITY [3] TO RESOLVE ALL ISSUE IN THIS CASE, ALL MOTIONS.

MS. NAKAKI: YOUR HONOR, PERHAPS I MISUNDERSTOOD THE SCHEDULING, BECAUSE SOME OF THE MOTIONS, DEPENDING ON HOW THE COURT RULES, MAY RENDER A DUAL JURY ISSUE MOOT. SO IT WAS MY UNDERSTANDING -- PERHAPS I MISUNDERSTOOD -- THAT WE WERE GOING TO HANDLE THE MOTIONS FIRST BEFORE WE GET TO THE JURY SELECTION.

THE COURT: THE ONLY MOTION THAT MIGHT RENDER THE DUAL JURIES MOOT IS MR. ALVARADO'S MOTION.

MS. NAKAKI: BOTH.

MR. BERNSTEIN: IF YOU KICK BOTH STATEMENTS, WE DON'T NEED DUAL JURIES.

THE COURT: BUT IF I DON'T KICK ONE STATEMENT?

MR. BERNSTEIN: WE ARE BACK TO SQUARE ONE.

MS. NAKAKI: JUST AS MORE OF A TECHNICAL ISSUE, THE MOTION TO SEVER OR IN THE ALTERNATIVE PEOPLE WISH TO AMENDMENT THEIR MOTION IN THE ALTERNATIVE A MOTION FOR ALTERNATE JURIES HASN'T BEEN RULED ON BY THE COURT IN DEPARTMENT J. SO BEFORE WE COMMENCE WITH JURY SELECTION, MY UNDERSTANDING IS THE COURT WOULD HAVE TO RULE AS TO WHETHER OR NOT WE NEED TO SELECT TWO JURIES OR NOT.

SO WOULD WE BE HANDLING THE MOTION FIRST.

THE COURT: DO YOU HAVE THAT IN WRITING?

MS. NAKAKI: YES. THE PEOPLE FILED A MOTION DATED DECEMBER 3, 1996, AS A MOTION TO SEVER.

AT THIS TIME THE PEOPLE ARE AMENDING THAT MOTION ORALLY; MOTION TO SEVER OR IN THE ALTERNATIVE MOTION FOR ALTERNATE JURIES. AUTHORITY WOULD BE UNDER PEOPLE VERSUS HARRIS 47 CAL 3D, 1047.

[4] THE COURT: AS FAR AS YOUR OFFER OF PROOF AS TO THAT, OFF THE RECORD YOU TOLD ME A LITTLE ABOUT HOW THE CASE IS GOING TO PROCEED. WHY DO YOU THINK THAT MULTIPLE, TWO JURIES, WOULD HANDLE THIS CASE AS OPPOSED TO HAVING TWO SEPARATE TRIALS?

MS. NAKAKI: YOUR HONOR, WITH REGARDS TO THAT PARTICUI AR ISSUE, IT'S WITHIN THE COURT'S DISCRETION WHETHER TO HAVE TWO SEPARATE TRIALS OR IN THE ALTERNATIVE HAVE MULTIPLE JURIES.

THE COURT: I'M LOOKING AT UTILIZATION OF TIME AND INCONVENIENCE OF WITNESSES.

MS. NAKAKI: MY UNDERSTANDING IN THIS PARTICULAR CASE THE ONLY REASON WHY THERE WOULD BE A NEED FOR TWO JURY IS THE ARANDA/BRUTON ISSUE. THE EVIDENCE PRESENTED AS TO BOTH DEFENDANTS WILL BE IDENTICAL, THE WITNESSES CALLED TO TESTIFY WILL BE IDENTICAL.

THE ONLY DIFFERENCE IN THE TESTIMONY OR THE EVIDENCE PRESENTED AS TO MR. SOTO AND ALVARADO ARE THEIR RESPECTIVE STATEMENTS, AND MY UNDERSTANDING IN THE CASE OF HARRIS AND SOME OF THE SECONDARY AUTHORITY, PREFERABLE MEANS OF PROVIDING THE ARANDA/BRUTON PROTECTION IS A MULTIPLE JURY, HAVING A SINGLE TRIAL WITH MULTIPLE JURIES.

IT'S NOT ONLY MORE EFFICIENT, BUT YOU HAVE A SITUATION WHERE YOU HAVE THE WITNESSES COMING IN ONE TIME RATHER THAN TWO TIMES, IN TERMS OF SEPARATE TRIALS.

THE COURT: IF I DON'T GRANT BOTH OF YOUR MOTIONS TO SUPPRESS, DO YOU HAVE INPUT AS FAR AS SEPARATE TRIALS VERSUS TWO JURIES?

[5] MR. BERNSTEIN: I THINK IT'S THE COURT'S DISCRETION FROM MY PERSPECTIVE.

MR. GUTIERREZ: I HAD CONSIDERED ASKING FOR SEPARATE TRIALS AS OPPOSED TO DUAL JURIES, BASED ON THE FACT THAT IF PAUL SOTO WENT TO TRIAL FIRST, ONCE HIS CASE WAS RESOLVED, I WOULD CALL HIM AS A WITNESS AND WOULDN'T HAVE TO GO INTO THE ISSUE OF A DECLARATION AGAINST PENAL INTEREST, 1230, HIM BEING UNAVAILABLE.

AS AN OFFICER OF THE COURT, I REPRESENT TO THE COURT -- I SPOKE TO MR. BERNSTEIN, AND HE INFORMED ME THAT, YOU KNOW, UNLESS HE WAS ACQUITTED, IF HE HAD BEEN CONVICTED AND THERE

WAS AN APPEAL, THAT HE WOULD STILL BE UNAVAILABLE.

SO, I WAS GOING TO FILE A MOTION BASED ON THAT, BUT SINCE I CANNOT REPRESENT TO THE COURT THAT MR. SOTO WOULD BE AVAILABLE FOR ME AS A WITNESS ONCE HIS TRIAL IS OVER, THEN I SEE NO PROBLEM WITH DOING DUAL JURIES.

THE COURT: IN THAT CASE, WHAT I'LL DO IS IF I DON'T SUPPRESS BOTH OF THE STATEMENTS, I'M GOING TO GO AHEAD AND IMPANEL TWO JURIES.

LET ME GO AHEAD AND READ THE MATERIALS THAT HAVE BEEN SUBMITTED TO ME, GIVE YOU GUYS THE OPPORTUNITY TO MOVE TABLES, CHAIRS, WHATEVER HAS TO BE DONE, AND WHEN I AM READY, I'LL COME BACK OUT.

(OFF THE RECORD.)

THE COURT: BACK ON THE RECORD. MR. BERNSTEIN, I HAVE THE OPPOSITION THAT WAS FILED BY MS. NAKAKI IN THIS [6] CASE. I DID NOT FIND YOUR MOVING PAPERS.

MR. BERNSTEIN: YOUR HONOR, COULD I HAND THE COURT MY COPY?

THE COURT: IS THE THRUST OF THE STATEMENT THAT YOUR CLIENT SUPPOSEDLY MADE, "I'LL JUST WAIT UNTIL I GO TO COURT, I GUESS, UNTIL I TALK TO MY ATTORNEY, YOU KNOW"?

MR. BERNSTEIN: YES, HE'S BEEN GIVEN HIS MIRANDA RIGHTS AND THE QUOTE IS EXACTLY, "I'LL JUST WAIT TILL -- TILL I GO TO COURT, . GUESS, AND TALK TO MY ATTORNEY, YOU KNOW."

THE COURT: HOLD ON ONE SECOND.

MR. BERNSTEIN: AND THAT PAGE IS AN EXHIBIT TO THE MOTION.

THE COURT: ALL RIGHT. I'VE READ YOUR MOVING PAPERS ALSO, AND A COPY THE OF THE TRANSCRIPT, WHICH IS AT 329. HOW IS THIS UNLIKE THE DAVIS CASE WHERE THERE WAS A, QUOTE, "EQUIVOCAL," REQUEST FOR AN ATTORNEY?

MR. BERNSTEIN: I THINK THIS IS AN UNEQUIVOCAL STATEMENT. "I'LL WAIT," AND THEN THE POLICE, AS YOU SEE, KEEP GOING AND EVENTUALLY A STATEMENT IS RENDERED. AND I THINK IT'S QUITE CLEAR ON THE FACE OF THE LANGUAGE THAT'S USED, AND THAT'S THE CALL THIS COURT HAS TO MAKE, THAT THIS IS AN UNEQUIVOCAL, "I WILL WAIT UNTIL I GET TO COURT AND TALK TO MY ATTORNEY."

THE FACT THAT HE SAYS, "WELL, I GUESS I WILL," THAT'S JUST CONNECTIVE LANGUAGE. THE SALIENT PARTS ARE, "I WILL WAIT," AFTER HE GETS HIS MIRANDA RIGHTS, "UNTIL I GET TO COURT AND

TALK TO MY ATTORNEY." THE POLICE KEEP UP THEIR [7] INTERROGATION AND EVENTUALLY SOMETHING THAT THE DEFENSE WOULD PREFER NOT TO BE BEFORE THE JURY COMES OUT.

THE COURT: MS. NAKAKI?

MS. NAKAKI: YOUR HONOR THE PEOPLE'S INFORMATION WITH REGARDS TO MR. SOTO'S STATEMENT, "I'LL JUST WAIT UNTIL I GO TO COURT, I GUESS, AND TALK TO MY ATTORNEY, YOU KNOW," THE PEOPLE'S POSITION IS THAT IS NOT A CLEAR REQUEST FOR COUNSEL. IT'S AN AMBIGUOUS STATEMENT REGARDING SOMETHING IN THE NATURE OF AN ATTORNEY OR SPEAKING TO AN ATTORNEY POSSIBLY AT SOME TIME IN THE FUTURE.

AND AS THE DAVIS DECISION HELD, OFFICERS DO NOT HAVE AN OBLIGATION TO STOP QUESTIONING A SUSPECT IF HE MAKES AN AMBIGUOUS OR EQUIVOCAL REQUEST FOR COUNSEL,

NOR ARE THEY REQUIRED TO ASK CLARIFYING QUESTIONS WHEN FACED WITH AN AMBIGUOUS OR EQUIVOCAL STATEMENT BY A SUSPECT. THAT'S WHAT WE HAVE IN THIS CASE.

THE PEOPLE'S POSITION IS THAT THE DEFENDANT DID NOT MAKE A CLEAR REQUEST FOR COUNSEL, AND UNDER THE CASE OF DAVIS VERSUS THE UNITED STATES, A 1994 U.S. SUPREME COURT DECISION, THE OFFICERS ARE UNDER NO OBLIGATION TO CEASE QUESTIONING. I THINK HE RAISED IN HIS MOVING PAPERS, PERHAPS, SOMETHING IN THE NATURE OF A 5TH AMENDMENT ASSERTION TO REMAIN SILENT.

THE PEOPLE'S POSITION WAS THAT IT WAS NOT IN ANYWAY AN INDICATION THAT HE WISHED NOT TO SPEAK ANY FURTHER. IT WAS AN AMBIGUOUS OR EQUIVOCAL REQUEST, AT BEST, AND BASED ON THE FACT THAT THERE WAS NOT A CLEAR

REQUEST FOR COUNSEL NOR AN INDICATION, CLEARLY, IN ANY MANNER THAT HE [8] WISHED NOT TO SPEAK ANY FURTHER -- AND WHAT IS SHOWN ON PAGE 329 IS THAT THE DEFENDANT, MR. SOTO, CONTINUED TO ANSWER QUESTIONS. BASED ON THIS AMBIGUITY, THE OFFICERS WERE UNDER NO OBLIGATION TO STOP QUESTIONING MR. SOTO AND THE STATEMENT IS ADMISSIBLE.

THE COURT: ANYTHING ELSE?

MR. BERNSTEIN: I DON'T KNOW WHAT EQUIVOCATION THAT COUNSEL TALKS ABOUT. "I'LL JUST WAIT UNTIL I GO TO COURT AND TALK TO MY ATTORNEY." THERE'S THE CULTURAL CONNECTIVE WORDS OF "I GUESS" AND "YOU KNOW." THAT DOESN'T EQUIVOCATE IN ANY FASHION. THAT'S JUST BEING POLITE AS YOU COMMUNICATE YOUR CLEAR INTENT TO POLICE OFFICERS, WHILE YOU'RE IN A CUSTODIAL SITUATION. AND HE'S BEEN GIVEN

HIS MIRANDA RIGHTS; THERE'S NO QUESTION HE'S IN A CUSTODIAL INTERROGATION. AND I DON'T THINK THERE'S ANY EQUIVOCATION WHATSOEVER IN THIS, AND I THINK IT'S QUITE CLEAR.

THE COURT: WELL, OBVIOUSLY BEING HIS ATTORNEY YOU HAVE ONE VIEW OF IT AND THE PEOPLE HAVE A DIFFERENT VIEW. I AM MORE OF AN IMPARTIAL ARBITER OF THIS. AND TAKING A LOOK AT THE TRANSCRIPT, PUTTING IT IN MORE CONTEXT THAN JUST THE STATEMENT ITSELF, THE STATEMENT MADE BY YOUR CLIENT FOLLOWED A DIALOGUE BY ONE OF THE DEPUTIES, WHICH I ASSUME WAS COMSTOCK, INDICATING, "WE WANT TO KNOW WHAT HAPPENS, BASICALLY, YOU CAN TELL US."

AND YOUR CLIENT SAYS, "I'LL JUST WAIT UNTIL I GO TO COURT, I GUESS, AND TALK TO MY ATTORNEY, YOU KNOW."

AND THEN COMSTOCK SAYS IN RESPONSE TO THAT, "WELL, THAT'S ENTIRELY UP TO YOU."

[9] AND THEN THE OTHER DEPUTY THERE SAYS, "YOU FEEL YOUR ATTORNEY KNOWS THE TRUTH AND YOU DON'T?" THAT WAS A CONTINUATION QUESTION, AND YOUR CLIENT THEN VOLUNTEERS AND SAYS, "NO."

SO I THINK AT BEST IT IS AMBIGUOUS. I DON'T THINK IT WAS A CLEAR, UNEQUIVOCAL REQUEST FOR AN ATTORNEY AND IT COULD HAVE BEEN TAKEN EITHER WAY. AND THE FACT HE THEN CONTINUED TO TALK LENDS CREDENCE TO THE FACT THAT HE DID NOT INVOKE HIS RIGHT TO AN ATTORNEY.

ALL RIGHT, I WILL DENY YOUR MOTION TO SUPPRESS.

MR. BERNSTEIN: THANK YOU, YOUR HONOR.

THE COURT: MR. GUTIERREZ, YOUR MOTION WAS THAT GIVEN THE NATURE OF THE CIRCUMSTANCES, THAT HE WAS AT THE PICO RIVERA SHERIFF'S STATION, WENT DOWN WITH HIS FATHER -- OR MOTHER AND FATHER.

MR. GUTIERREZ: YOUR HONOR, IT'S MY UNDERSTANDING THAT THE POLICE CONTACTED THE MOTHER, THE MOTHER CONTACTED THE FATHER, AND THE FATHER DROVE HIM DOWN TO THE POLICE STATION. THE MOTHER WAS AT THE POLICE STATION ALSO.

THE COURT: BOTH WERE THERE, NEITHER WERE ALLOWED TO GO INTO THE ROOM WITH HIM.

MR. GUTIERREZ: THAT'S CORRECT.

THE COURT: AND HE MADE A STATEMENT TO THE EFFECT, "CAN'T SOMEBODY COME IN WITH ME OR BE HERE WITH ME"?

MR. GUTIERREZ: IT WAS, "SHOULD SOMEBODY BE HERE WITH ME," OR, "IS SOMEONE GOING TO BE HERE WITH ME." MY CLIENT IS NOT CONCRETE AS TO HOW HE SPECIFICALLY SAID IT.

[10] HIS PARENTS ASKED TO GO IN. AS HE WAS BEING ESCORTED INSIDE, THEY APPARENTLY SAID, "NO," SOMETHING TO EFFECT, "WE ARE NOT GOING TO BE LONG." THE PARENTS WERE TOLD TO KEEP OUT. THEY SAT HIM DOWN, THERE WAS SOME PERIPHERAL CONVERSATION BEFORE THEY SET UP THE TAPE; I BELIEVE THE OFFICER WAS GOING THROUGH PAPERWORK, THINGS OF THAT SORT.

MY CLIENT MADE A COMMENT THAT THERE WAS NO RESPONSE TO, "SHOULD SOMEBODY BE HERE FOR ME," BUT HE WAS NEVER MIRANDIZED. MY OFFER OF PROOF IS, ONE, WE HAVE A JUVENILE. HE'S NOT AN ADULT, HE'S A JUVENILE. HE'S NEVER BEEN ARRESTED BEFORE. I BELIEVE HE ONCE WAS

CITED FOR A CURFEW VIOLATION, BUT NEVER BEEN INVOLVED IN THE JUVENILE SYSTEM OR THE ADULT SYSTEM. HE'S NEVER BEEN PROSECUTED FOR A SERIOUS CRIME OF ANY KIND.

IN FACT, HE'S NEVER EVEN BEEN ARRESTED FOR A CRIME, OTHER THAN, I THINK, NOT GOING HOME AT A CERTAIN TIME, BEING OUT ON THE STREETS BEYOND THE HOURS OF CURFEW. AND HE DID HAVE THAT ONE CONTACT WITH LAW ENFORCEMENT.

THE COURT: IT'S YOUR POSITION THAT PUTTING HIM INTO A ROOM WAS A SUBSTANTIAL OR SIGNIFICANT DEPRAVATION OF HIS FREEDOM OR CONVEYED THE IMPRESSION THAT HE WAS FREE TO LEAVE.

MR. GUTIERREZ: AS I CITE IN MY MOVING PAPERS, PARTICULARLY PAGE 4, AND I CITE THE WATERSHED CASE, THE LANDMARK CASE OF

EDWARDS VS. ARIZONA. IT STATES NOT ONLY THAT A PERSON IS TAKEN INTO CUSTODY OR OTHERWISE DEPRIVED OF HIS FREEDOM OF ACTION IN any SIGNIFICANT WAY.

[11] IN THIS CASE, WE HAVE A JUVENILE TAKEN TO THE POLICE STATION, INTERVIEWED FOR TWO-PLUS HOURS, WE KNOW HE'S NOT A VERY SOPHISTICATED PERSON, HE HAS NO RECORD OR ANYTHING OF THAT SORT.

IT'S MY UNDERSTANDING THAT HE WAS A SUSPECT AT THAT TIME, THAT HE WAS NOT FREE TO LEAVE, THAT IT WAS IN THE INTERROGATION ROOM OF THE POLICE STATION. AND IF YOU LOOK AT THE CIRCUMSTANCES, AND I CITE PEOPLE VERSUS BOYER, THE MOST IMPORTANT CONVERSATION IN DECIDING IS THE CUSTODY ISSUE INCLUDE: ONE, THE SITE OF THE INTERROGATION. TWO, WHETHER THE INTERROGATION FOCUSED ON THE SUSPECT.

AND, THREE, WHETHER THE OBJECTIVE INDICIA OF ARREST ARE PRESENT AND THE LENGTH AND FORM OF QUESTIONING.

HERE THE SITE OF THE INTERROGATION IS A POLICE STATION, APPROPRIATE LOCATION FOR INTERROGATION. TWO, THE INTERROGATION HAD FOCUSED ON MY CLIENT BECAUSE IT'S MY UNDERSTANDING THAT HE WAS A SUSPECT AND THAT, IN FACT, WAS ARTICULATED TO THE MOTHER WHEN SHE TURNED HIM IN WEEKS LATER WHEN THE DISTRICT ATTORNEY DECIDED TO CHARGE IT.

AND, IN FACT, MY CLIENT INFORMS ME THAT WHEN HE WAS BEING ESCORTED INTO THE INTERROGATION ROOM, APPARENTLY THERE WAS A BRIEF CONVERSATION WHERE ONE OFFICER ASKED -- I DON'T KNOW IF IT WAS DETECTIVE LEE OR COMSTOCK -- "WHAT DO WE HAVE HERE; WE ARE GOING TO QUESTION A SUSPECT," SOMETHING TO

THAT EFFECT. I THINK THE INVESTIGATION WAS SUCH THAT MY CLIENT WAS A SUSPECT AN AIDING BETTING THEORY.

THREE, WHETHER THE OBJECTIVE INDICIA OF ARREST WAS PRESENT. THAT GOES BACK TO THE LOCATION OF THE [12] INTERVIEW; IN A POLICE INTERROGATION ROOM. PARENTS NOT PERMITTED TO GO IN THERE, HE DID NOT BELIEVE HE WAS FREE TO LEAVE.

IT WAS A LENGTHY INTERROGATION OF TWO-PLUS HOURS AS THE CASE SUGGESTION. SO I THINK WHAT WE DO HAVE IS A CUSTODIAL INTERROGATION. AND THEREFORE, MY CLIENT SHOULD HAVE BEEN GIVEN THE BENEFITS OF MIRANDA. THE FACT THAT THEY DID NOT ARREST HIM AND ALLOWED HIM TO GO HOME, IF ANYTHING, SHOWS SOPHISTICATION OF THE GOVERNMENT IN THAT THEY KNOW THAT ANY TIME YOU DO HAVE A

CUSTODIAL INTERROGATION YOU HAVE TO GIVE MIRANDA. THEY DID NOT IN THIS CASE AND SUBSEQUENTLY ARRESTED AND CHARGED HIM AND HE WAS A SUSPECT.

THE OBJECTIVE CRITERIA AND THE SUBJECTIVE CRITERIA, THE FACT OF MY CLIENT'S BELIEVING HE WAS IN CUSTODY, HE SHOULD HAVE RECEIVED THE BENEFITS OF MIRANDA.

AND I'LL SUBMIT IT.

THE COURT: WHY DOES NOT THIS FALL WITHIN THE PAREMETERS OF THE MATHIASON CASE THAT WAS A SITUATION WHERE THE INDIVIDUAL IS TAKEN DOWN TO THE POLICE STATION, INTERVIEWED FOR AT LEAST 30 MINUTES OR LONGER AND THEN WAS, IN FACT, LET GO.

MR. GUTIERREZ: I THINK WHAT'S DIFFERENT IS THE LENGTHS OF THE INTERVIEW, THE FACT THAT MY CLIENT WAS DEFINITELY A SUSPECT. AND I

THINK THE LENGTH OF THE INTERVIEW IS ONE OF THE PRIMARY FACTORS, AND ALSO, AS I INDICATED TO THE COURT, I AM MAKING AN ISSUE INVOLUNTARINESS OF THE STATEMENT.

THE COURT: MS. NAKAKI.

[13] MS. NAKAKI: YOUR HONOR, THE PEOPLE'S POSITION IS THAT THE CASE OF OREGON VERSUS MATHIASON 429, U.S. 711, A 1977 U.S. SUPREME COURT DECISION, IS DIRECTLY ON POINT TO THE SITUATION THAT WE HAVE HERE WITH MR. ALVARADO'S INTERVIEW BY DETECTIVE COMSTOCK. THERE ARE A NUMBER OF SIMILARITIES: ONE, THE LOCATION OF THE INTERVIEW. IN THE MATHIASON CASE THAT SUSPECT WAS, IN FACT, INTERVIEWED AT THE POLICE STATION.

AND WHAT THE SUPREME COURT NOTED IS SIMPLY BECAUSE THERE IS AN INTERVIEW AT A POLICE STATION DOES NOT RENDER A CUSTODIAL-

TYPE SITUATION. THAT'S WHAT WAS ESSENTIALLY THE SITUATION IN THE CASE OF MR. ALVARADO'S INTERVIEW. MY UNDERSTANDING IS THAT MR. ALVARADO WAS REQUESTED, THROUGH A REQUEST BY DETECTIVE COMSTOCK OF MR. ALVARADO'S PARENTS, TO HAVE HIM AVAILABLE FOR QUESTIONING, WHICH THEY DID BRING HIM TO THE STATION.

AND FOLLOWING THE INTERVIEW BY DETECTIVE COMSTOCK, MR. ALVARADO'S WAS PERMITTED TO LEAVE THE STATION. AND THAT'S WHAT IS TELLING ABOUT WHETHER OR NOT THERE WAS, IN FACT, A CUSTODIAL-TYPE SITUATION, THAT FOLLOWING THE INTERVIEW, MR. ALVARADO'S WAS FREE TO LEAVE. AND, IN FACT, DID LEAVE WITH HIS PARENTS FOLLOWING THE INTERVIEW.

AND ANOTHER SIMILARITY WITH THE MATHIASON CASE IS WHEN THE SUSPECT IN

MATHIASON WAS BROUGHT TO THE STATION TO BE INTERVIEWED, THE OFFICER DID, IN FACT, TELL HIM THAT HE WAS BEING INTERVIEWED FOR PURPOSES OF A BURGLARY INVESTIGATION, AND THAT THEY DID CONSIDER HIM A SUSPECT IN THE CASE.

[14] SO THE FACT THAT THE DETECTIVE IN THIS CASE THOUGHT PERHAPS THAT MR. ALVARADO'S WAS A SUSPECT IS NOT DISPOSITIVE, AND, AGAIN, THE PEOPLE'S POSITION IS THAT THE CASE OF OREGON VERSUS MATHIASON IS DIRECTLY ON POINT TO THE SITUATION WITH MR. ALVARADO.

MR. GUTIERREZ: I WOULD SUBMIT ONE THING TO THE COURT. I THINK IF MY CLIENT WAS A SUSPECT, AND THE OFFICERS BELIEVED HIM TO BE A SUSPECT AT THE TIME, THAT THEY SHOULD NOT BE ALLOWED TO CIRCUMVENT MIRANDA BY ALLOWING HIM TO GO HOME, KNOWING THEY CAN ARREST HIM A WEEK OR TWO LATER.

IN SOME WAYS IT'S ANALOGOUS TO THE SITUATION WE HAVE THAT RIGHT NOW, WHICH IS QUITE A CONTROVERSY IN THE LEGAL PROFESSION, WHEN POLICE OFFICERS WILL SAY, "OKAY, YOU DON'T WANT TO WAIVE YOUR MIRANDA RIGHTS, TELL ME OFF THE RECORD WHAT HAPPENED." AND THEN LATER ON WHEN THE DEFENDANT TAKES THE STAND, THEY IMPEACH HIM UNDER NEW YORK VS. HARRIS, AND ALTHOUGH THAT'S APPROPRIATE RIGHT NOW UNDER NEW YORK VS. HARRIS, I THINK THERE'S A GROWING CONCERN IN THE LEGAL PROFESSION, AND RIGHTFULLY SO, THAT THE POLICE SHOULD NOT BE ALLOWED TO BASICALLY CIRCUMVENT GOOD LAW, GOOD PRINCIPLES, AND THAT'S WHAT WE ARE DOING HERE.

I THINK THAT THIS YOUNG MAN, IF HE'S A SUSPECT IN A VERY SERIOUS CHARGE, SUCH AS MURDER, IS TAKEN TO THE POLICE STATION AND

HAS TO SUBMIT TO A QUESTIONING, THEY WANT HIM THERE, THEY DIDN'T INVITE HIM, HE WAS TOLD THAT HE HAD TO COME THERE. HE GOES THERE, THEY QUESTION HIM FOR TWO HOURS, THEY SHOULD GIVE HIM THE BENEFIT OF MIRANDA. MIRANDA IS GOOD LAW, AND I DON'T THINK IT SHOULD BE CIRCUMVENTED.

[15] THE COURT: I THINK YOU'RE RIGHT THAT MIRANDA IS GOOD LAW. I'M NOT SURE THAT IT APPLIES IN THIS CASE. IN MATHIASON IT LOOKS LIKES THE INVESTIGATION HAD REALLY NARROWED DOWN TO MATHIASON HIMSELF, AND HE WAS BASICALLY TOLD, "IT'S UP TO THE D.A. THE D.A. IS GOING TO MAKE A DECISION WHETHER TO FILE ON YOUR GUY OR NOT, BUT WE ARE GOING TO LET YOU GO UNTIL THAT TIME."

THAT REALLY NARROWS ITSELF DOWN. IN THAT SITUATION, IT WASN'T A CUSTODIAL.

MR. GUTIERREZ: REGARDING THE SUBSEQUENT ISSUE REGARDING THE EDWARDS VS. ARIZONA, REGARDING THE RIGHT TO COUNSEL, I'LL JUST SUBMIT IT, YOUR HONOR, ON MY MOVING PAPERS.

THE COURT: THAT REQUEST, THEN, FOR SUPPRESSION IS DENIED.

WHY DON'T WE GO AHEAD AND RECESS UNTIL TOMORROW MORNING. LET THE RECORD REFLECT WE'VE KIND OF REARRANGED THE COURTROOM HERE TO MAKE IT AS EASY AS POSSIBLE FOR EVERYBODY AND WE CAN GET 60 JURORS DOWN HERE TOMORROW. DO WE CARE WHO GOES FIRST?

MR. GUTIERREZ: MR. BERNSTEIN AND I SPOKE. APPARENTLY BECAUSE HE'S FIRST IN THE COMPLAINT, HE'LL GO FIRST.

THE COURT: WHY DON'T WE GET IN HERE AS CLOSE TO 9 O'CLOCK AS POSSIBLE. WE HAVE A

COUPLE OF HOUSEKEEPING MATTERS TO TAKE CARE OF BEFORE WE BRING A JURY PANEL DOWN.

MR. GUTIERREZ: I WILL BE HERE EARLY AND KEEP CHECKING IN WITH THE COURT.

[16] MR. BERNSTEIN: ONE OF THE THINGS WE DISCUSSED OFF THE RECORD WAS SECURITY. I HAD A CHANCE TO TALK TO YOUR BAILIFF. AS FAR AS MY CLIENT'S CONCERNED, WHAT WAS THAT THING YOU TOLD ME YOU WERE GOING TO DO?

THE BAILIFF: REACT BELT. IT GOES UNDER THE CIVILIAN CLOTHING HE'LL HAVE ON.

MR. BERNSTEIN: MY UNDERSTANDING OF IT IS THAT BECAUSE IT'S UNDER THE CIVILIAN CLOTHES, IT'S NOT APPARENT TO THE JURY. AND SO ACCORDINGLY, I HAVE NO OBJECTION. IF FOR SOME REASON IT BECOMES -- CIRCUMSTANCES CHANGE AND THE JURY CAN SEE IT, I'LL BRING IT TO THE COURTS ATTENTION.

MR. GUTIERREZ: ONE LAST POINT, I DON'T THINK I MADE MY POINT CLEAR ON THE RECORD. THERE WAS CONVERSATION OFF THE RECORD EARLIER. MY PREFERENCE IS TO HAVE A SINGLE, AS OPPOSED TO A DUAL JURY. I UNDERSTAND MR. BERNSTEIN'S CONCERN. AND IN LIGHT OF THE COURT'S RULING REGARDING MY CLIENT'S STATEMENT, IF THE PEOPLE DO INTEND TO INTRODUCE IT IN THEIR CASE IN CHIEF, I RECOGNIZE CO-COUNSEL'S CONCERN FOR A JOINT TRIAL. MY PREFERENCE IS A JOINT TRIAL.

THE COURT: THE INHERENT DISCRETION OF THE COURT IS OTHERWISE. WE WILL HAVE TWO JURIES. 9 O'CLOCK TOMORROW.

(WHEREUPON THE PROCEEDINGS WERE ADJOURNED TO THURSDAY, MARCH 6, 1997, AT 9:00 A.M.)

LODGED
CLERK, U.S. DISTRICT COURT
JUN 12 2000
CENTRAL DISTRICT
OF CALIFORNIA

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF-RESPONDENT,	)	NO. VA035109
VS.	)	
PAUL RAYMOND SOTO, DEFENDANT-APPELLANT.	)	

APPEAL FROM THE SUPERIOR COURT OF
LOS ANGELES COUNTY
HONORABLE PHILIP H. HICKOK, JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL

APPEARANCES:

FOR PLAINTIFF-RESPONDENT:	DAN E. LUNGREN STATE ATTORNEY GENERAL 300 SPRING STREET NORTH TOWER, SUITE 5001 LOS ANGELES, CALIFORNIA 90013
FOR THE DEFENDANT-APPELLANT:	IN PROPRIA PERSONA

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PAGES 243 THROUGH
513, INCL.

CHRISTIE SCHIZAS, CSR 8790

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT
NO. SO-E HON. PHILIP H. HICKOK, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF-RESPONDENT,	)	NO. VA035109
VS.	)	
PAUL RAYMOND SOTO, DEFENDANT-APPELLANT.	)	

REPORTER'S TRANSCRIPT ON APPEAL
MARCH 10, 11, 1997

APPEARANCES:

FOR THE PEOPLE: GILBERT GARCETTI
DISTRICT ATTORNEY
BY: CAROLINE NAKAKI, DEPUTY
12720 NORWALK BOULEVARD
NORWALK, CALIFORNIA 90650

FOR THE DEFENDANT: PAUL R. SOTO
BARRY O. BERNSTEIN
ATTORNEY AT LAW
1901 AVENUE OF THE STARS
SUITE 1240
CENTURY CITY, CALIFORNIA 90067

CHRISTIE SCHIZAS, CSR #8790

[265] MS. NAKAKI: YOUR HONOR, THE PEOPLE CALL MANUEL RIVERA.

THE CLERK: DO YOU SOLEMNLY SWEAR THAT THE TESTIMONY YOU ARE ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NŌTHING BUT THE TRUTH, SO HELP YOU GOD?

THE WITNESS: I DO.

MANUEL RIVERA,

PRODUCED AS A WITNESS BY AND ON BEHALF OF THE PEOPLE, HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE TAKE A SEAT IN THE WITNESS STAND. STATE YOUR NAME AND SPELL YOUR FIRST LAST NAME FOR THE RECORD.

THE WITNESS: MANUEL RIVERA; M-A-N-U-E-L R-I-V-E-R-A.

THE COURT: GO AHEAD.

+DIRECT EXAMINATION

BY MS. NAKAKI:

Q GOOD MORNING, MR. RIVERA.

A GOOD MORNING.

Q ON SEPTEMBER 22, 1995, WERE YOU LIVING AT 11551-1/2 DAVENRICH AVENUE, D-A-V-E-N-R-I-C-H, AVENUE?

A YES.

Q AND THAT'S IN THE CITY OF SANTA FE SPRINGS, COUNTY OF LOS ANGELES?

A YES, IT IS.

[266] Q AND THE RESIDENCE THAT YOU WERE LIVING IN WAS NEXT TO A SHOPPING CENTER; IS THAT CORRECT?

A YES.

Q ON THAT DAY ON SEPTEMBER 22, 1995, DURING THE DAY, WHERE WERE YOU?

A DURING THE DAY I WAS AT TOWN CENTER HALL.

Q WHAT IS TOWN CENTER HALL?

A IT'S LIKE AN ACTIVITY CENTER FOR YOUTH.

Q WAS THERE ANYONE, ANY OF YOUR FRIENDS WITH YOU WHEN YOU WERE AT THE TOWN CENTER HALL?

A YES.

Q WHO WAS WITH YOU?

A MYSELF, MIKE AND JASON.

Q YOU MENTIONED THE NAME MIKE. IS MIKE IN THE COURTROOM TODAY?

A YES, HE IS.

Q WOULD YOU POINT HIM OUT AND TELL US WHAT HE'S WEARING IN COURT TODAY?

A SEATED OVER THERE WEARING A WHITE SHIRT AND A TIE.

THE COURT: INDICATING FOR THE RECORD THE DEFENDANT, MR. ALVARADO.

Q BY MS. NAKAKI: NOW, AT SOME POINT DID YOU LEAVE THE TOWN CENTER HALL?

A YES, WE DID.

Q WHERE DID YOU GO?

A WE WENT BACK TO MY HOUSE.

Q YOU SAID WE WENT BACK TO YOUR HOUSE. WHO WENT [267] BACK TO YOUR HOUSE?

A MYSELF AND MIKE.

Q AND MIKE BEING THE PERSON YOU IDENTIFIED IN COURT TODAY?

A YES.

Q DO YOU REMEMBER ABOUT WHAT TIME THAT WAS THAT YOU AND MIKE WENT BACK TO YOUR HOUSE?

A NO.

Q WAS IT IN THE AFTERNOON SOMETIME?

A YES.

Q WHILE YOU WERE AT YOUR HOUSE DID ANYONE ELSE COME TO YOUR HOUSE?

A YES.

Q DO YOU REMEMBER WHO ELSE CAME TO YOUR PLACE ON SEPTEMBER 22, 1995?

A THE EVENING, YES.

Q WHO IN THE EVENING OF SEPTEMBER 22, 1995 CAME TO YOUR HOUSE?

A JASON, VALERIE, DESMOND, MR. SOTO.

Q NOW, YOU MENTIONED A PERSON BY THE NAME OF JASON. DO YOU KNOW JASON'S LAST NAME?

A ROMERO.

Q AND YOU MENTIONED VALERIE. DO YOU KNOW VALERIE'S LAST NAME?

A NO, I DON'T.

Q AND YOU MENTIONED AN INDIVIDUAL BY THE NAME OF DESMOND. DO YOU KNOW HIS LAST NAME?

A PACHECO.

[268] Q AND YOU MENTIONED SOMEONE BY THE NAME OF -- YOU IDENTIFIED AS A MR. SOTO CAME TO YOUR HOUSE THAT EVENING. DO YOU KNOW MR. SOTO'S FIRST NAME?

A PAUL.

Q WITH REGARDS TO PAUL SOTO, IS PAUL SOTO IN THE COURTROOM TODAY?

A YES, HE IS.

Q WOULD YOU POINT OUT PAUL SOTO AND TELL US WHAT HE'S WEARING IN COURT TODAY?

A RIGHT THERE, WEARING A GREEN SHIRT.

THE COURT: INDICATING FOR THE RECORD THE DEFENDANT, MR. SOTO.

Q BY MS. NAKAKI: WAS MIKE AT THE HOUSE ALSO THAT EVENING?

A YES, HE WAS.

Q WAS THERE ANYBODY ELSE THAT CAME TO YOUR HOUSE THAT EVENING?

A YES.

Q AND WHO ELSE CAME TO YOUR HOUSE THAT EVENING?

A TONI.

Q IS TONI A MAN OR A WOMAN?

A IS A FEMALE. TONI AND SONJA.

Q DO YOU KNOW EITHER TONI OR SONJA'S LAST NAME?

A SONJA RIOS AND TONI BAZURTO.

Q WERE THERE ANY OTHER PEOPLE THAT CAME BY YOUR HOUSE THAT EVENING?

A NO.

Q SO AT ONE POINT YOU, MIKE, TONI BAZURTO, SONJA [269] RIOS, JASON ROMERO, VALERIE, DESMOND PACHECO AND PAUL SOTO AND MICHAEL ALVARADO WERE AT YOUR HOUSE; IT THAT RIGHT?

A YES.

Q AND WHILE YOU WERE AT THE HOUSE HAD YOU BEEN DRINKING?

A YES.

Q DO YOU REMEMBER IF PAUL SOTO WAS DRINKING?

A YES.

Q WAS MICHAEL ALVARADO DRINKING?

A YES.

Q AND THE OTHER PEOPLE THAT YOU MENTIONED AT THE HOUSE, WERE THEY ALL DRINKING, IF YOU KNOW?

A YES, WE ALL WERE DRINKING.

Q DO YOU REMEMBER WHAT YOU WERE DRINKING?

A YES.

Q WHAT?

A BUDWEISER.

Q AND DO YOU REMEMBER HOW MUCH BUDWEISER YOU HAD THAT EVENING?

A ABOUT TWO 40-OUNCERS.

Q THAT WAS THROUGHOUT THE EVENING?

A NO. THERE WAS MORE.

Q YOU HAD OTHER THINGS TO DRINK?

A YES.

Q WHAT ELSE DID YOU DRINK?

A STRAWBERRY WINE, SOME MORE BEER.

Q ABOUT WHAT TIME DO YOU REMEMBER THAT YOU STARTED DRINKING?

[270] A I DON'T REMEMBER THE TIME.

Q HOW LONG OF A PERIOD OF TIME WAS IT? A HALF HOUR, SEVERAL HOURS?

A SEVERAL HOURS.

Q AND WITH RESPECT TO PAUL SOTO, YOU STATED HE HAD BEEN DRINKING ALSO, CORRECT?

A YES.

Q DO YOU REMEMBER WHAT HE WAS DRINKING?

A THE SAME 40-OUNCERS.

Q DO YOU KNOW HOW MANY 40-OUNCERS HE HAD?

A NO, I DON'T.

Q HOW ABOUT MICHAEL ALVARADO; DO YOU REMEMBER IF HE HAD BEEN DRINKING?

A YES.

Q DO YOU RECALL HOW MUCH MICHAEL HAD BEEN DRINKING?

A NO, I DO NOT.

Q WAS PAUL SOTO DRINKING THROUGHOUT THIS SEVERAL HOUR TIME FRAME ALSO?

A YES.

Q AND HOW ABOUT MICHAEL ALVARADO; WAS HE DRINKING THROUGHOUT THIS SEVERAL-HOUR TIME FRAME?

A YES.

Q AT SOME POINT -- LET ME BACK UP.

AT THE TIME ON SEPTEMBER 22, 1995, DID YOU HAVE A TELEPHONE IN YOUR HOME?

A NO.

Q IN ORDER TO USE A PHONE WHERE WOULD YOU HAVE [271] TO GO?

A TO THE SHOPPING CENTER.

Q IS THAT RIGHT NEXT TO YOUR HOUSE; IS THAT CORRECT?

A YES, IT IS.

Q ARE THERE PAY PHONES THERE?

A YES.

Q NOW, DURING THAT EVENING DID ANY OF THE PEOPLE AT THE PARTY USE THE PAY PHONES?

A YES.

Q AND DO YOU REMEMBER WHO?

A JASON WENT FIRST, AND THEN LATER IN THE EVENING AFTER EVERYONE WAS LEAVING EVERYONE ELSE WENT TO THE PAY PHONE.

Q SO THROUGHOUT THE EVENING VARIOUS PEOPLE WOULD GO TO USE THE PAY PHONES?

A YES.

Q IS IT BY A PARTICULAR STORE OR RESTAURANT?

A IT'S BY JACK'S MARKET.

MS. NAKAKI: YOUR HONOR, I HAVE A SERIES OF FOUR PHOTOGRAPHS MARKED A, B, C AND D. I WOULD LIKE TO COLLECTIVELY MARK THEM PEOPLE'S 1 FOR IDENTIFICATION.

THE COURT: ALL RIGHT. PEOPLE'S NUMBER 1, THEN. A SERIES OF PHOTOGRAPHS ON ONE POSTER BOARD.

(WHEREUPON, SERIES OF PHOTOS, PEOPLE'S EXHIBIT 1, WAS MARKED FOR IDENTIFICATION.)

[272] MS. NAKAKI: YOUR HONOR, I'M GOING TO PLACE THIS UP ON THE BOARD HERE. MAY I HAVE THE WITNESS STEP DOWN.?

THE COURT: YES, YOU MAY.

Q BY MS. NAKAKI: WE'RE LOOKING AT PEOPLE'S 1-A, IT'S THE UPPER LEFT-HAND PHOTOGRAPH.

DO YOU REMEMBER RECOGNIZE WHAT IS IN THAT PHOTOGRAPH, WHAT THE PHOTOGRAPH DEPICTS?

A YES.

Q WHAT IS IT?

A THE SHOPPING CENTER PARKING LOT.

Q YOU ARE GOING TO HAVE TO KEEP YOUR VOICE UP.

A THE SHOPPING CENTER PARKING LOT.

Q IS THIS THE SHOPPING CENTER THAT WAS NEXT TO YOUR HOUSE ON SEPTEMBER 22, 1995?

A YES, IT IS.

Q AND YOU HAD STATED THAT THE PHONES THAT PEOPLE WERE USING WERE BY A JACK'S MARKET; IS THAT CORRECT?

A YES.

Q AND IF JACK'S MARKET IS ON THAT PHOTOGRAPH IN PEOPLE'S 1-A, CAN YOU POINT TO WHERE JACK'S MARKET IS?

A THERE.

MS. NAKAKI: THE WITNESS POINTED TO THE UPPER POTION OF THE PHOTOGRAPH. AND I'M HANDING THE WITNESS AN ORANGE MARKER.

Q WOULD YOU GO AHEAD AND CIRCLE THE PORTION THAT IS JACK'S MARKET.

A (COMPLIES).

MS. NAKAKI: THE WITNESS PLACED A CIRCLE IN ORANGE ON [273] PEOPLE'S 1-A.

Q LOOKING AT PEOPLE'S 1-B, DO YOU RECOGNIZE WHAT IS DEPICTED IN THIS PHOTOGRAPH?

A YES.

Q WHAT IS DEPICTED IN THAT PHOTOGRAPH?

A AERIAL PHOTO OF THE SHOPPING CENTER.

Q YOU STATED THAT YOUR HOUSE IS NEXT TO THE SHOPPING CENTER; IS THAT RIGHT?

A YES, IT IS.

Q THE HOUSE THAT YOU WERE LIVING IN ON SEPTEMBER 22, 1995?

A YES.

Q IS YOUR HOUSE DEPICTED IN THIS PHOTOGRAPH, PEOPLE'S 1-B?

A YES, IT IS.

Q GO AHEAD AND CIRCLE THE HOUSE THAT YOU WERE LIVING IN ON SEPTEMBER 22, 1995.

A (COMPLIES).

MS. NAKAKI: THE WITNESS PLACED A CIRCLE ON PEOPLE'S 1-B.

Q YOU CAN GO AHEAD AND HAVE A SEAT.

NOW, AT SOME POINT YOU SAID TOWARDS THE END OF THE EVENING EVERYBODY WENT TO GO USE THE PHONES, IS THAT RIGHT?

A THAT IS CORRECT.

Q AND DO YOU REMEMBER WHO WENT TO GO USE THE PHONES LATER THAT EVENING?

A YES.

[274] Q WHO?

A MYSELF, MIKE, PAUL, JASON, DESMOND AND VALERIE.

Q SO 6 PEOPLE ALTOGETHER?

A YES.

Q WHAT HAPPENED TO THE OTHER FOLKS THAT YOU HAD MENTIONED WERE AT YOUR HOUSE THAT EVENING, TONI BAZURTO, SONJA RIOS, WHAT HAPPENED TO THEM?

A THEY WERE TAKEN HOME.

Q NOW, AT THE TIME WHEN THE GROUP THAT YOU MENTION, THE SIX OF YOU HAD GONE TO USE THE PHONES, DO YOU REMEMBER APPROXIMATELY WHAT TIME THAT WAS?

A NO, I DON'T.

Q WAS IT AFTER MIDNIGHT?

A YES.

Q NOW, WHEN THE GROUP OF YOU HAD GONE TO USE THE PHONES, WHERE WERE YOU? WERE YOU ALL STANDING? WERE YOU IN THE PARKING LOT OF ONE OF THE BUSINESSES? DO YOU REMEMBER?

A YES, WE WERE STANDING NEAR JACK'S MARKET.

Q AND YOU CIRCLED AN AREA IN PEOPLE'S 1-A. WERE YOU IN THAT GENERAL AREA?

A YES,

Q WAS THE ENTIRE GROUP IN THAT GENERAL AREA?

A YES.

Q WHEN YOU ALL WERE THERE IN THAT GENERAL AREA, DID YOU SEE TRUCK PULL INTO THE PARKING LOT?

A YES.

Q AND DO YOU REMEMBER IF IT WAS A NEW TRUCK OR [275] OLDER TRUCK?

A AN OLDER TRUCK.

Q NOW, WHEN THIS TRUCK PULLED INTO THE PARKING LOT, DO YOU REMEMBER IF ANYONE WENT UP TO THE TRUCK WHEN IT CAME INTO THE PARKING LOT?

A YES.

Q AND WHO WAS IT THAT WENT UP TO THE TRUCK?

A VALERIE.

Q AND VALERIE WAS ONE OF THE PEOPLE AT THE PARTY AT YOUR HOUSE?

A YES.

Q AND DID THE TRUCK STOP?

A YES, IT DID.

Q AND WAS THIS IN THE PARKING LOT?

A YES, IT WAS.

Q MR. RIVERA, WOULD YOU STEP DOWN AGAIN. AND IF IT'S EITHER IN PEOPLE'S 1-A OR 1-B,

CAN YOU SHOW US WHERE THE TRUCK FIRST STOPPED WHEN VALERIE APPROACHED THE TRUCK?

A HERE (INDICATING).

MS. NAKAKI: THE WITNESS HAS POINTED TO THE LEFT-HAND PORTION OF THE PHOTOGRAPH, AND IT APPEARS TO BE THE CORNER OF A BUILDING IN PEOPLE'S 1-A.

Q THANK YOU. GO AHEAD AND HAVE A SEAT.

AT THAT TIME WHEN THE TRUCK STOPPED, THAT'S RIGHT WHEN VALERIE APPROACHED, IT DID YOU SEE HOW MANY PEOPLE WERE IN THE TRUCK?

A THERE WAS ONE.

Q DO YOU REMEMBER IF IT WAS A MAN OR A WOMAN?

[276] A IT WAS A MAN.

Q AND AFTER -- OR WHEN VALERIE APPROACHED THE TRUCK, DO YOU RECALL IF SHE GOT ANYTHING FROM THIS MAN?

A SHE RECEIVED CHANGE FROM HIM.

Q DID YOU HEAR ANY CONVERSATION BETWEEN VALERIE AND THIS MAN?

A NO, I DID NOT.

Q YOU SAW HE GOT CHANGE FROM THE MAN; IS THAT CORRECT?

A YES.

Q AND AFTER VALERIE GOT CHANGE FROM THIS MAN, DID THE TRUCK JUST STAY THERE OR DID IT GO SOMEWHERE ELSE?

A YES. IT MOVED AHEAD TO THE DUMPSTER.

Q SO THE SAME TRUCK WENT TO A DUMPSTER?

A YES.

Q IS THIS DUMPSTER IN THE PARKING LOT?

A YES, IT IS.

Q AND WHAT HAPPENED WHEN THIS TRUCK WENT TO THE DUMPSTER?

A THE MALE GOT OUT AND OPENED THE DUMPSTER DOOR.

Q SORRY?

A THE MALE GOT OUT AND OPENED THE DUMPSTER DOOR.

Q IS THIS THE SAME MAN THAT VALERIE APPEARED TO BE SPEAKING WITH?

A YES.

MS. NAKAKI: IF I MAY, I'M GOING TO HAVE THE WITNESS STEP DOWN.

THE COURT: YES, YOU MAY.

[277] Q BY MS. NAKAKI: YOU MENTIONED THAT THE TRUCK WENT TO A DUMPSTER DID IT STOP THERE?

A YES, IT DID.

Q IN PEOPLE'S 1-A DO YOU SEE THE DUMPSTER WHERE THE TRUCK HAD STOPPED?

A YES, I DO.

Q WOULD YOU DRAW A SQUARE AROUND THE DUMPSTER?

A (COMPLIES).

MS. NAKAKI: THE WITNESS HAS PLACED A SQUARE ON PEOPLE'S 1-A IN THE -- APPROXIMATELY THE MIDDLE OF THE PHOTOGRAPH.

Q IF YOU KNOW, WAS THE TRUCK JUST PARKED THERE AT THAT POINT?

A YES.

Q THIS OLDER TRUCK?

A YES.

Q AND THIS MAN, HE HAD GOTTEN OUT OF THE TRUCK?

A YES, HE DID.

Q WHAT DID YOU SEE THE MAN DOING?

A COLLECTING CARDBOARD.

Q DID YOU SEE ANYTHING IN THE BED OF HIS TRUCK?

A YES, CARDBOARD.

Q THIS MAN THAT WAS AT THE DUMPSTER THAT WAS COLLECTING THE CARDBOARD, WAS HE BASICALLY MINDING HIS OWN BUSINESS?

A YES.

Q WAS THIS A YOUNGER MAN, OLDER MAN?

A OLDER MAN.

[278] Q AT THIS TIME WHEN HE WAS BY THE DUMPSTER, DID YOU SEE HIM INSULTING ANYBODY?

A NO.

Q WAS HE DISRUPTING THE SITUATION IN ANY WAY?

A NO, HE WASN'T.

Q WHERE WERE YOU WHEN YOU SAW THIS MAN COLLECTING THE CARDBOARD FROM THE DUMPSTER?

A I WAS NEAR THE PAY PHONE.

Q WHEN YOU SAY "NEAR THE PAY PHONE," IS THAT BY THE JACK'S MARKET --

A YES, IT IS.

Q -- WHERE YOU CIRCLED ON PEOPLE'S 1-A; IS THAT CORRECT?

A THAT IS CORRECT.

Q YOU COULD SEE THE TRUCK FROM WHERE YOU WERE?

A YES.

Q AND AT THIS POINT WHEN THE TRUCK, THIS OLDER TRUCK IS BY THE DUMPSTER AND YOU SEE THIS MAN COLLECTING CARDBOARD, WHERE IS MR. SOTO?

A STANDING RIGHT THERE (INDICATING).

Q WHEN YOU SAY "STANDING RIGHT THERE," WHERE?

A IN FRONT. IN FRONT OF ME SOMEWHERE. NEAR ME.

Q ABOUT HOW FAR FROM YOU WHEN YOU SAY NEAR YOU?

A FROM MYSELF TO THE DESK.

Q TO THIS DESK HERE (INDICATING)?

A YES.

THE COURT: APPROXIMATELY EIGHT, NINE FEET.

Q BY MS NAKAKI: WHERE IS MR. ALVARADO?

[279] A HE WENT TO THE DONUT STORE.

Q NOW, WHEN PAUL WAS ABOUT NINE FEET AWAY FROM YOU, WHO ELSE WAS STANDING IN THAT AREA, IF ANYBODY?

A IT WAS JASON, DESMOND AND VALERIE.

MR. BERNSTEIN: I DIDN'T HEAR THE LAST NAME.

THE WITNESS: JASON, DESMOND AND VALERIE.

Q BY MS. NAKAKI: WHILE YOU, DESMOND, JASON AND VALERIE AND PAUL SOTO WERE IN THIS AREA, DO YOU RECALL IF PAUL SAID ANYTHING?

A YES.

Q WHAT DID PAUL SAY?

A "LET'S JACK."

Q "LET'S" --

A JACK. "LET'S JACK."

Q WHEN HE SAID "LET'S JACK," WAS HE REFERRING OR IN ANY WAY INDICATING WHO OR WHO HE WAS REFERRING TO?

A YEAH.

Q WHO OR WHAT WAS HE REFERRING TO?

A REFERRING TOWARDS THE TRUCK.

Q THAT'S A TRUCK BY THE DUMPSTER?

A YES.

Q CAN YOU TELL US WHAT "JACK" MEANS?

A IT MEANS TO STEAL.

Q NOW, AT THIS POINT WHEN HE -- WHEN PAUL MADE THIS COMMENT, "LET'S JACK," YOU WERE STANDING THERE; IS THAT CORRECT?

A YES.

Q AND YOU HEARD HIM?

[280] A YES.

Q AND DESMOND WAS STANDING THERE?

A YES.

Q WAS HE STANDING OR SITTING, IF YOU RECALL?

A HE WAS SITTING.

Q AND VALERIE WAS THERE?

A YES.

Q DO YOU REMEMBER WHERE SHE WAS?

A NEXT TO JASON AND DESMOND.

Q AND JASON WAS NEXT TO WHO?

A TO VALERIE.

Q NOW, WHEN PAUL SAID "LET'S JACK," DID YOU DO ANYTHING?

A NO.

Q DID YOU SAY ANYTHING TO HIM?

A NO, I DID NOT.

Q DID DESMOND DO ANYTHING?

A NO.

Q DID JASON DO ANYTHING?

A NO.

Q DID VALERIE DO ANYTHING?

A JUST -- NO.

Q NOW, AT THIS POINT WHEN NOBODY DID ANYTHING, WHAT DID PAUL DO?

A STAYED QUIET.

Q DID HE AGAIN -- OR DID HE SAY ANYTHING ELSE?

A YES.

Q WHO DID HE SAY?

[281] A HE REPEATED IT.

Q WHEN YOU SAY "HE REPEATED IT," WHAT DID PAUL REPEAT?

A "LET'S JACK."

Q WHEN HE REPEATED "LET'S JACK," WHO WAS PRESENT WHEN HE SAID IT THE SECOND TIME?

A MYSELF, JASON, DESMOND, VALERIE AND MIKE.

Q SO THE SECOND TIME -- I'M GOING TO BACK UP.

THE FIRST TIME HE SAYS "LET'S JACK" BASICALLY NOBODY THAT WAS OUT THERE DOES ANYTHING. YOU DON'T DO ANYTHING, JASON DOESN'T DO ANYTHING, DESMOND DOESN'T DO ANYTHING AND VALERIE DOESN'T DO ANYTHING; IS THAT CORRECT?

A THAT'S CORRECT.

Q AT SOME POINT YOU INDICATED MIKE IS NOW PRESENT; IS THAT CORRECT?

A YES.

Q HOW MUCH TIME PASSED BETWEEN THE FIRST TIME PAUL SAID "LET'S JACK" TO THE SECOND TIME HE SAID " LET'S JACK"?

A NO MORE THAN TWO MINUTES.

Q AND IT WAS DURING THIS TWO MINUTE TIME FRAME THAT MIKE COMES BACK TO THE GROUP; IS THAT CORRECT?

A YES.

Q AND THE SECOND TIME THAT PAUL SAYS "LET'S JACK," JUST SO THAT WE ARE CLEAR, WHO WAS PRESENT THE SECOND TIME THAT PAUL SAYS "LET'S JACK"?

A MYSELF, MIKE, DESMOND, JASON AND VALERIE.

Q SO IN OTHER WORDS, THE SAME GROUP, BUT MIKE [282] HAS NOW JOINED THE GROUP THE SECOND TIME?

A YES.

Q FOR THE RECORD, MIKE BEING MR. ALVARADO, THE PERSON YOU IDENTIFIED IN COURT?

A YES.

Q NOW, WHEN PAUL SAYS THIS THE SECOND TIME, "LET'S JACK," DID ANYBODY AGREE TO GO WITH PAUL?

A YES.

Q WHO AGREED TO GO WITH PAUL TO GO JACK?

A MIKE.

Q MIKE BEING MR. ALVARADO, THE PERSON YOU'VE IDENTIFIED IN COURT TODAY?

A YES.

Q NOW, YOU SAID THAT MIKE AGREED TO GO WITH PAUL. DID MIKE SAY SOMETHING?

A YEAH.

Q WHAT DID MIKE SAY?

A "LET'S GO."

Q WHEN MIKE AGREED TO GO AND HE SAID "LET'S GO," AFTER PAUL ASKED THE SECOND TIME "LET'S JACK," WHERE WAS EVERYONE? AND BY "EVERYONE," I MEAN, WHERE WERE YOU WHEN MIKE SAID "LET'S GO"?

A WHERE WERE ALL JUST STANDING.

Q STILL BY THE PHONES?

A YES.

Q WHERE WAS DESMOND?

A STILL IN THE SAME SPOT.

Q BY THE PHONES?

[283] A UH-HUH.

Q WHERE WAS JASON?

A IN THE SAME SPOT.

Q WHERE WAS VALERIE?

A SAME.

Q AND MIKE ALSO WAS BY THE PHONES?

A YES.

Q HOW FAR WERE YOU FROM MIKE WHEN HE SAID "LET'S GO"?

A NO FURTHER THAN I AM TO HER (INDICATING).

Q "HER," YOU'RE REFERRING TO THE COURT REPORTER?

A YES.

THE COURT: FOUR FEET.

Q BY MS. NAKAKI: WHERE WAS PAUL WHEN HE SAID "LET'S JACK" THE SECOND TIME, HOW FAR WAS HE FROM YOU?

A EXCUSE ME?

Q THE SECOND TIME THAT PAUL SAID "LET'S JACK" TO THE GROUP WHEN MIKE WAS THERE THE SECOND TIME, HOW FAR WAS PAUL FROM YOU?

A SAME DISTANCE.

Q AND HOW FAR APART WERE PAUL AND MIKE WHEN THE SECOND CONVERSATION TOOK PLACE "LET'S JACK," WHEN MIKE SAYING "LET'S GO"?

A FROM MYSELF TO THE DESK.

MS. NAKAKI: APPROXIMATELY NINE FEET, YOUR HONOR?

THE COURT: YES.

Q BY MS. NAKAKI: WHEN THIS AGREEMENT WAS MADE, PAUL SAYING "LET'S JACK" THE SECOND TIME AND MIKE SAYING [284] "LET'S GO," EVERYONE IS STILL BY THE PHONES; IS THAT CORRECT?

A THAT IS CORRECT.

Q SO NOBODY HAS MOVED AT THAT POINT?

A CORRECT.

Q FOLLOWING THIS AGREEMENT BY MIKE, "LET'S GO," AFTER PAUL SAID "LET'S JACK," WHAT HAPPENED?

A A SMALL AMOUNT OF TIME HAD PASSED, AND THEN THEY STARTED WALKING TOWARDS THE TRUCK.

Q YOU SAID A SMALL AMOUNT OF TIME HAD PASSED. SO THERE WAS A PAUSE AFTER THIS EXCHANGE, "LET'S JACK" BY PAUL AND MIKE SAYING "LET'S GO"; IS THAT CORRECT?

A YES.

Q DO YOU RECALL IF PAUL SAID ANYTHING ELSE TO MIKE?

A "I'LL GIVE YOU HALF."

Q WHEN PAUL SAID "I'LL GIVE YOU HALF," WAS HE DIRECTING THAT TO MIKE OR SOMEONE ELSE IN THE GROUP?

A TO MIKE.

Q AND WHEN PAUL SAID "I'LL GIVE YOU HALF" TO MIKE, WERE THEY STILL STANDING -- AND I'M REFERRING TO PAUL AND MIKE, WERE THEY STILL

STANDING IN THE GROUP BY THE PHONES AT JACK'S MARKET?

A YES.

Q THIS SMALL AMOUNT OF TIME BETWEEN THE STATEMENTS, AND THEN SOMETHING ELSE HAPPENING, APPROXIMATELY HOW MUCH TIME WAS THAT?

A ABOUT HALF A MINUTE.

[285] Q SO AFTER PAUL SAYS "LET'S JACK," MIKE SAYS "LET'S GO," PAUL SAYS " I'LL GIVE YOU HALF" TO MIKE, APPROXIMATELY HALF A MINUTE LATER SOMETHING ELSE HAPPENS; IS THAT CORRECT?

A YES.

Q WHAT HAPPENED?

A THEY BOTH WALKED TOWARDS THE TRUCK.

Q WHEN YOU SAY "THEY BOTH WALKED TOWARDS THE TRUCK," WHO ARE YOU TALKING ABOUT?

A PAUL AND MIKE.

Q WHEN PAUL AND MIKE WALKED TOWARDS THE TRUCK, ARE YOU TALKING ABOUT THE TRUCK THAT WAS PARKED AT THE DUMPSTER?

A YES.

Q AND IF YOU REMEMBER, WERE PAUL AND MIKE WALKING SIDE BY SIDE ONE IN FRONT OF THE OTHER?

A ONE IN FRONT OF THE OTHER.

Q AND WHO WAS IN FRONT?

A PAUL.

Q AND WAS MIKE DIRECTLY IN BACK OF PAUL OR WAS HE TO THE SIDE, IF YOU RECALL?

A TO THE SIDE.

Q DID YOU SEE WHERE PAUL WENT?

A TOWARDS THE DRIVER'S SIDE.

Q AND WHEN YOU SAY DRIVER'S SIDE, THE DRIVER SIDE OF THIS TRUCK?

A YES.

Q AND IF YOU REMEMBER, WHERE DID MIKE GO?

[286] A TOWARDS THE PASSENGER SIDE.

MS. NAKAKI: AND, AGAIN, I'LL HAVE THE WITNESS STEP DOWN, YOUR HONOR.

Q LOOKING AT PEOPLE'S 1-A WHERE YOU'VE DRAWN A CIRCLE HERE AT THE STOP OF THE PHOTOGRAPH AND THEN THE SQUARE, DO YOU SEE THE TWO ORANGE MARKINGS YOU PUT ON PEOPLE'S 1-A?

A YES, I DO.

Q WHEN YOU SAID THAT PAUL AND MIKE WALKED TOWARDS THE TRUCK, ARE YOU TALKING ABOUT GOING FROM THIS AREA? AND I'M POINTING

AT THE CIRCLE YOU DREW ON PEOPLE'S 1-A TO THE SQUARE WHERE THE DUMPSTER IS, THE ORANGE SQUARE YOU'VE MARKED IN PEOPLE'S 1-A, IS THAT THE PATH TAKEN TO THE TRUCK BY PAUL AND MIKE?

A YES.

Q YOU CAN HAVE A SEAT.

AND WHEN YOU SAW PAUL AND MIKE GOING TOWARDS THE TRUCK THAT WAS BY THE DUMPSTER, DO YOU REMEMBER IF EITHER OF THEM WERE RUNNING OR WALKING? CAN YOU DESCRIBE THAT FOR US?

A WALKING.

Q AND APPROXIMATELY HOW LONG DID IT TAKE FOR PAUL AND MIKE TO GET TO THE TRUCK AT THE DUMPSTER, IF YOU REMEMBER?

A NO, I DON'T.

Q THEY WERE WALKING AT A REGULAR PACE; IS THAT CORRECT?

A YES.

[287] Q DO YOU KNOW THE APPROXIMATE DISTANCE FROM WHERE THE PAY PHONES WERE TO THE DUMPSTER?

A NO, I DO NOT.

Q WAS IT THE APPROXIMATE LENGTH OF THIS COURTROOM OR FURTHER?

A IT'S FURTHER.

Q NOW, YOU SAID THAT PAUL WENT TO THE DRIVER'S SIDE OF THE TRUCK; IS THAT CORRECT?

A YES.

Q YOU STATED EARLIER THAT THE MAN THAT WAS IN THE TRUCK WAS AT THE DUMPSTER; IS THAT RIGHT?

A YES.

Q WAS THE MAN CLOSER TO THE DRIVER'S SIDE OF THIS TRUCK OR THE PASSENGER SIDE OF HIS TRUCK?

A THE DRIVER'S SIDE.

Q AND WHEN YOU SAW PAUL APPROACH THE DRIVER'S SIDE, WHERE WAS THE MAN?

A NEAR THE OPENING OF THE DUMPSTER.

Q AND THE DRIVER'S SIDE OF THE TRUCK WAS NEAR THE OPENING OF THE DUMPSTER; THAT'S CORRECT?

A THAT'S CORRECT.

Q WHEN PAUL WAS APPROACHING THE DRIVER'S SIDE OF THE TRUCK, DID YOU SEE WHAT THE MAN WAS DOING?

A SEARCHING FOR CARDBOARD.

Q SO HE WAS IN THE DUMPSTER AREA?

A YES.

Q AND DO YOU REMEMBER WHAT MIKE WAS DOING OR WHERE MIKE WAS AS PAUL WAS APPROACHING THE DRIVER'S SIDE?

[288] A NEAR THE PASSENGER SIDE.

Q MIKE WAS NEAR THE PASSENGER SIDE?

A YES.

Q I'LL BACK UP. LET ME REPHRASE THAT.

MIKE WAS ON THE PASSENGER SIDE; IS THAT CORRECT?

A THAT IS CORRECT.

Q PAUL WAS ON THE DRIVER'S SIDE?

A YES.

Q AND DO YOU REMEMBER APPROXIMATELY WHERE MIKE WAS ON THE PASSENGER SIDE WHEN PAUL WAS GOING TO THE DRIVER'S SIDE?

A NEAR THE RIGHT TIRE, THE REAR TIRE.

Q WHEN PAUL APPROACHED THE DRIVER'S SIDE OF THE TRUCK, DO YOU RECALL HOW FAR OR

WHERE RELATIVE TO THE DRIVER'S SIDE OF THE TRUCK PAUL WAS?

A NO, I DON'T.

Q DO YOU REMEMBER IF HE WAS BY THE BACK OF THE TRUCK BY THE DRIVER'S DOOR BY THE FRONT OF THE TRUCK?

A BY THE DOOR.

Q BY THE DRIVER'S DOOR?

A YES.

Q AND WHEN YOU SAW PAUL BY THE DRIVER'S DOOR, WHERE WAS THE MAN THAT WAS AT THE DUMPSTER?

A IN BETWEEN THE DRIVER'S DOOR AND THE DUMPSTER DOOR.

Q IF YOU COULD TELL, APPROXIMATELY HOW CLOSE WAS PAUL TO THE MAN AT THE DUMPSTER?

[289] A I DON'T KNOW.

Q WAS IT FROM WHERE I AM TO WHERE YOU WERE, WHICH IS PROBABLY ABOUT 15 FEET?

A NO.

Q WAS IT CLOSER?

A YES.

Q AND WHERE THIS COURT REPORTER IS TO WHERE YOU WERE, COULD YOU TELL IF THE DISTANCE BETWEEN PAUL AND THE MAN WAS ABOUT THE SAME OR CLOSER?

A ABOUT THE SAME.

MS. NAKAKI: THAT WOULD BE ABOUT FOUR FEET, YOUR HONOR?

THE COURT: THAT WAS FOUR FEET.

Q BY MS. NAKAKI: NOW, WHEN PAUL WAS ABOUT APPROXIMATELY FOUR FEET FROM THIS MAN, DID IT APPEAR THAT PAUL WAS SAYING ANYTHING OR COULD YOU TELL WHETHER HE WAS SAYING ANYTHING TO THIS MAN?

A IT LOOKED LIKE HE WAS SAYING SOMETHING.

Q THERE APPEARED TO BE SOME SORT OF CONVERSATION BETWEEN THE MAN AND PAUL; IS THAT CORRECT?

A THAT IS CORRECT.

Q WHEN THIS IS GOING ON, MIKE IS STILL IN THE PASSENGER SIDE?

A THAT IS CORRECT.

Q AND HE'S BY THE RIGHT REAR PASSENGER SIDE?

A YES.

MR. GUTIERREZ: OBJECTION, YOUR HONOR. RIGHT REAR TIRE.

[290] THE COURT: SUSTAINED.

REPHRASE.

Q BY MS. NAKAKI: RIGHT REAR TIRE?

A YES.

MS. NAKAKI: YOUR HONOR, I'LL ASK THE WITNESS STEP DOWN AND SEE IF I CAN CLEAR THIS UP. I'LL HAVE THE WITNESS LOOK AT PEOPLE'S 1-C.

Q SEE THE PHOTOGRAPH MARKED PEOPLE'S 1-C APPEARS TO HAVE A TRUCK AND A LITTLE BUILDING THERE TO THE LEFT.

DO YOU SEE THAT?

A YES.

Q DO YOU RECOGNIZE WHAT IS DEPICTED IN THAT PHOTOGRAPH?

A YES, I DO.

Q AND YOU HAD BEEN REFERENCING A DUMPSTER THAT YOU SAW THAT EVENING. IS THAT DUMPSTER DEPICTED IN PEOPLE'S 1-C?

A YES, IT IS.

Q FOR THE RECORD, I'LL HAVE YOU CIRCLE WITH THIS BROWN PEN.

MS. NAKAKI: THE WITNESS HAS PLACED A CIRCLE ON PEOPLE'S 1-C.

Q THERE APPEARS TO BE A TRUCK TO THE RIGHT OF THAT DUMPSTER, A WHITE PICKUP TRUCK. DOES THAT TRUCK LOOK FAMILIAR TO YOU?

A SOMEWHAT, YES.

Q DOES IT LOOK SOMEWHAT LIKE THE TRUCK YOU SAW ON SEPTEMBER 23, 1995?

[291] A YEAH.

Q WHEN YOU SAID YOU RECALL MIKE BEING AT THE RIGHT REAR TIRE, WHY DON'T YOU GO AHEAD AND PLACE AN X IN APPROXIMATELY THE LOCATION WHERE YOU SAW MIKE WHEN PAUL WAS AT THE DRIVER'S SIDE?

A (COMPLIES).

MS. NAKAKI: THE WITNESS PLACED AN X ON PEOPLE'S 1-C. IT APPEARS TO BE TO THE RIGHT OF THE RIGHT REAR TIRE.

THE COURT: VERY WELL.

Q BY MS. NAKAKI: YOU STATED YOU SAW WHAT YOU SAID APPEARED TO BE A CONVERSATION BETWEEN PAUL AND THE MAN AT THE DUMPSTER. ABOUT HOW LONG DID THIS -- WHAT APPEARED TO BE A CONVERSATION -- GO ON?

A NOT TOO LONG.

Q WHEN YOU SAY "NOT TOO LONG," TEN MINUTES?

A SHORTER TIME.

Q ONE MINUTE?

A ABOUT HALF A MINUTE.

Q COULD YOU ACTUALLY SEE THIS MAN TALKING BACK? COULD YOU SEE WHAT THE MAN WAS DOING WHILE THIS APPARENT CONVERSATION WAS GOING ON?

A NO.

Q YOU COULDN'T SEE THE MAN AT ALL?

A NO.

Q IF YOU COULD NOT SEE THE MAN, HOW COULD YOU TELL THERE WAS APPARENTLY A CONVERSATION BETWEEN PAUL AND THE MAN?

[292] A I COULD NOT.

Q YOU COULDN'T?

A NO.

Q HOW DID IT APPEAR TO YOU PAUL WAS IN A CONVERSATION WITH SOMEONE?

A HAND MOVEMENT.

Q SORRY?

A HAND MOVEMENT.

Q HE WAS -- PAUL WAS GESTURING?

A YES.

Q IT APPEARED HE WAS GESTURING TOWARDS SOMEBODY OR AT SOMEBODY?

A YES.

Q AFTER THIS HALF A MINUTE OF WHAT PERIOD TO BE A CONVERSATION, THIS GESTURE BY PAUL, WHAT HAPPENED?

A THERE WAS A SHOT.

Q SO YOUR HEARD SOMETHING IS THAT RIGHT?

A YES.

Q YOU SAID A SHOT. IT SOUNDED LIKE A GUNSHOT TO YOU?

A YES.

Q WHEN YOU HEARD THIS GUNSHOT, WHERE WERE YOU?

A NEAR THE PHONES.

Q YOU SAY "NEAR THE PHONES." ARE YOU REFERRING TO THE PHONES BY JACK'S MARKET?

A YES.

Q AND WHERE WAS DESMOND?

A ALSO NEAR THE PHONES.

[293] Q AT THE TIME OF THE GUNSHOT?

A YES.

Q WHERE WAS VALERIE AT THE TIME THE GUNSHOT?

A NEITHER PHONES.

Q HOW ABOUT JASON?

A HE WAS ALSO NEAR THE PHONES.

Q WHAT HAPPENED -- WHAT DID YOU DO AFTER YOU HEARD THIS GUNSHOT?

A I RAN.

Q DID YOU SEE IF ANYONE HAD BEEN SHOT?

A NO, I DID NOT SEE.

Q SO YOU JUST STARTED RUNNING?

A YES.

Q AND WHERE DID YOU RUN TO?

A I RAN TO MY HOUSE.

Q DID ANYBODY ELSE RUN TO YOUR HOUSE?

A YES.

Q WHO?

A VALERIE, JASON, DESMOND, PAUL AND MIKE.

Q BASICALLY EVERYONE WENT BACK TO YOUR HOUSE; IS THAT CORRECT?

A THAT IS CORRECT.

Q NOW, WHEN EVERYONE CAME BACK TO YOUR HOUSE, DID YOU SEE PAUL AT YOUR HOUSE --

A YES.

Q -- WHEN THEY CAME BACK OR WHEN PAUL CAME BACK?

AND DID YOU NOTICE ANYTHING ON HIS CLOTHES WHEN HE CAME BACK TO YOUR HOUSE AFTER HE HEARD THE GUNSHOT?

[294] A YES.

Q WHAT DID YOU NOTICE ABOUT PAUL'S CLOTHES?

A THERE WAS BLOOD.

Q AND ON PART OF PAUL'S CLOTHING DID YOU SEE BLOOD?

A ON HIS SLEEVE.

Q HIS SLEEVE TO HIS SHIRT?

A YES.

Q WAS IT LONG-SLEEVED OR SHORT-SLEEVED?

A SHORT SLEEVE.

Q IF YOU REMEMBER, WAS IT LIKE A DRESS SHIRT OR T-SHIRT OR SWEATER, IF YOU REMEMBER?

A T-SHIRT.

Q AND THIS BLOOD THAT WAS ON THE T-SHIRT, DO YOU RECALL IF THE T-SHIRT WAS A LIGHT-COLORED T-SHIRT, DARK-COLORED T-SHIRT?

A LIGHT.

Q AND DID YOU SEE WHERE PAUL WENT AFTER HE CAME BACK TO YOUR HOUSE?

A INTO MY ROOM.

Q WHAT DID PAUL DO WHEN HE WENT INTO YOUR ROOM?

A TOOK OFF HIS SHIRT.

Q THIS IS THE SHIRT WITH BLOOD ON IT?

A YES.

Q AND WHAT DID PAUL DO AFTER HE TOOK OFF THE SHIRT WITH BLOOD ON IT?

A HE DROPPED IT ON THE FLOOR.

MS. NAKAKI: YOUR HONOR, MAY I HAVE ONE MOMENT? [295] YOUR HONOR, IF I MAY HAVE JUST ONE MINUTE.

Q SO AFTER PAUL TOOK OFF HIS SHIRT, HE PUT IT ON THE FLOOR; IS THAT WHAT YOU SAID?

A YES.

Q AND WHAT DID HE DO AFTER HE TOOK OFF HIS SHIRT?

A HE DROPPED THE GUN.

Q YOU SAW A GUN?

A YES.

Q AND PAUL HAD THIS GUN?

A YES.

Q CAN YOU DESCRIBE THIS GUN FOR US?

A BLACK, LONG.

Q SORRY?

A BLACK AND LONG.

Q WHEN YOU SAY LONG, ARE YOU REFERRING TO --

A THE BARREL.

Q IF YOU KNOW, WAS IT A SEMI-AUTOMATIC A REVOLVER, DO YOU KNOW?

A A REVOLVER.

Q YOU MENTIONED THAT YOU SAW BLOOD ON THE SLEEVE OF A LIGHT-COLORED T-SHIRT. DO YOU REMEMBER SEEING BLOOD ANYWHERE ELSE ON PAUL?

A NO, I DON'T REMEMBER.

Q IF YOU REMEMBER, DID HE DRY TO CLEAN UP OR WASH UP, ANYTHING LIKE THAT?

A YES.

Q WHERE WAS THAT?

[296] A IN MY BATHROOM.

MS. NAKAKI: YOUR HONOR, IF I MAY JUST HAVE A MOMENT.

Q YOU SAID YOU DROPPED THIS GUN, THE LONG-BARRELED REVOLVER, WHERE DID YOU DROP IT?

A FROM MY KNOWLEDGE, DROPPED IT UNDER MY BED.

Q DID YOU ACTUALLY SEE HIM DROP IT UNDER YOUR BED?

A NO, DID I NOT.

Q DID YOU ACTUALLY SEE PAUL WITH THIS GUN?

A NO.

Q YOU NEVER SAW IT IN HIS POSSESSION?

A NO.

Q IF I MAY ASK, HOW DID YOU KNOW IT WAS PAUL'S GUN?

A NO ONE ELSE HAD IT. NO ONE ELSE, TO MY KNOWLEDGE, HAD ANYTHING ON THEM.

Q HOW IS IT THAT YOU WERE AWARE THAT PAUL HAD A GUN?

A I WAS NOT AWARE.

Q DID PAUL SAY ANYTHING TO YOU ABOUT WHAT HAD HAPPENED AT THE PARKING LOT IN THE SHOPPING CENTER?

A NO.

Q NOW, YOU HAD BEEN INTERVIEWED BACK IN OCTOBER OF 1995 BY THE SHERIFFS, THE DETECTIVES. DETECTIVE COMSTOCK, FOR THE RECORD, IS IN THE COURTROOM AS THE I.O. DO YOU REMEMBER THAT?

A YES, I DO.

Q AND DID PAUL SAY ANYTHING TO YOU ABOUT WHAT [297] HAPPENED IN THE PARKING LOT?

A NO, HE DID NOT.

Q DO YOU RECALL TELLING THE DETECTIVES THAT PAUL TOLD YOU ABOUT WHAT HAPPENED OUT IN THE PARKING LOT?

A NO, I DON'T REMEMBER.

Q WOULD IT PERHAPS ASSIST YOU TO LOOK AT A TRANSCRIPT OF AN INTERVIEW BY DETECTIVE COMSTOCK AND DETECTIVE LEE BACK IN OCTOBER OF 1995 WITH YOU?

A YES.

Q MS. NAKAKI: YOUR HONOR, FOR THE RECORD, I AM GOING TO BE SHOWING THE WITNESS PAGE 7, LINE 28 THROUGH PAGE 8, LINE 8, I'M GOING TO HAVE THE WITNESS READ THAT PORTION, SEE IF IT REFRESHES YOUR MEMORY.

MR. GUTIERREZ: SORRY. PAGE 7, 28 TO --

MS. NAKAKI: PAGE 7, LINE 28 AND PAGE 8 THROUGH LINE 8.

THE COURT: JUST READ THAT TO YOURSELF QUIETLY.

THE WITNESS: (WITNESS COMPLIES).

Q BY MS. NAKAKI: HAVING HAD A CHANCE TO READ PORTIONS OF THE TRANSCRIPT OF THE INTERVIEW, DOES THAT HELP REFRESH YOUR MEMORY?

A YES.

Q THAT EVENING DID PAUL TELL YOU WHAT HAD HAPPENED OUT IN THE PARKING LOT? AND BY "THE PARKING LOT," I'M REFERRING TO THE SHOPPING CENTER RIGHT BEHIND YOUR HOUSE.

A YES.

Q WHAT DID PAUL TELL YOU?

[298] A AGAIN, HIS DEMAND FOR MONEY AND THE KEYS TO HIS CAR.

Q DID PAUL TELL YOU WHETHER OR NOT THE MAN GAVE HIM THE MONEY AND THE KEYS TO HIS CAR?

A NO, HE DID NOT.

Q AND DID PAUL TELL YOU WHAT HE DID AFTER HE TOLD THE MAN -- OR MADE THE DEMAND FOR MONEY AND THE KEYS TO HIS CAR?

A SHOT HIM.

Q PAUL TOLD YOU THAT HE SHOT HIM; IS THAT CORRECT?

A NO, HE DID NOT SAY THAT.

Q LET'S BACK UP. WHAT DID PAUL TELL YOU AFTER YOU HEARD THE GUNSHOT IN THE SHOPPING CENTER AND YOU ALL WENT BACK TO YOUR HOUSE? WHAT DID PAUL TELL YOU HAPPENED OUT THERE IN THE PARKING LOT?

A THAT HE DID NOT GIVE HIM THE MONEY OR THE KEYS TO THE CAR.

Q SO PAUL TOLD YOU -- IF I CAN CLARIFY THIS -- THAT HE ASKED FOR THE MONEY AND THE KEYS TO THE CAR AND THE MAN DIDN'T GIVE HIM THE MONEY AND THE KEYS TO THE CAR; IS THAT CORRECT?

A THAT IS CORRECT.

Q THAT'S WHAT PAUL TOLD YOU?

A YES.

Q NOW, YOU HAD MENTIONED THAT PAUL HAD BLOOD ON HIS SLEEVE. DID ANYBODY ELSE THAT CAME BACK TO YOUR HOUSE AFTER HEARING A GUNSHOT HAVE BLOOD ON HIM? DID MIKE HAVE [299] BLOOD ON HIM?

A. NO.

Q DID JASON HAVE BLOOD ON HIM?

A NO.

Q DID VALERIE HAVE BLOOD ON HER?

A NO.

Q DID DESMOND HAVE BLOOD ON HIM?

A NO.

Q DID YOU HAVE BLOOD ON YOU?

A NO.

Q JUST PAUL SOTO HAD BLOOD ON HIM?

A YES.

Q YOU NEVER SAW MR. SOTO WITH A GUN, BUT AT SOME POINT YOU BECAME AWARE THERE WAS A GUN UNDER YOUR BED; IS THAT CORRECT?

A YES.

Q AND DID PAUL SAY ANYTHING TO YOU ABOUT THE GUN UNDER YOUR BED?

A NO.

Q DID PAUL SAY ANYTHING TO YOU ABOUT DISCUSSING OR SAYING ANYTHING ABOUT WHAT

OCCURRED OUT IN THE PARKING LOT AT THE SHOPPING CENTER BEHIND YOUR HOUSE?

A NO.

Q DO YOU RECALL DURING THE INTERVIEW BACK IN OCTOBER OF 1995 TELLING THE DETECTIVES THAT PAUL HAD MENTIONED SOMETHING ABOUT NOT SAYING ANYTHING?

MR. GUTIERREZ: OBJECTION, YOUR HONOR; LEADING.

THE COURT: SUSTAINED.

[300] Q BY MS. NAKAKI: WOULD IT REFRESH YOUR MEMORY OR ASSIST YOU IF YOU HAD AN OPPORTUNITY TO REVIEW A TRANSCRIPT OF YOUR INTERVIEW OF OCTOBER 1995 WITH DETECTIVE COMSTOCK AND LEE AS TO WHETHER OR NOT PAUL SAID SOMETHING TO YOU ABOUT DISCUSSING ANYTHING THAT WENT ON OUT IN THE PARKING LOT?

A YES.

MS. NAKAKI: FOR THE RECORD, I'LL SHOW THE WITNESS PAGE 21, LINES 22 THROUGH 26, AND PAGE 26, LINES 19 AND 20.

THE COURT: VERY WELL.

MR. RIVERA, I WOULD LIKE YOU TO READ ON THIS PAGE, PAGE 21, LINES 22 THROUGH 26.

A (COMPLIES).

Q AND THEN SHOWING THE WITNESS PAGE 26 LINES 19 AND 20.

A (COMPLIES).

Q DID YOU HAVE AN OPPORTUNITY TO REVIEW THOSE TWO PAGES?

A (INDICATES BY NODDING HEAD UP AND DOWN).

Q DOES THAT REFRESH YOUR MEMORY AS TO WHETHER OR NOT PAUL HAD SAID ANYTHING TO YOU OR ANYONE ELSE ABOUT DISCUSSING WHAT

HAPPENED OUT THERE IN THE PARKING LOT AT THE SHOPPING CENTER?

A YES.

Q WHAT DID PAUL SAY?

A "DON'T SAY ANYTHING."

Q IS THAT WHAT HE TOLD YOU, "DON'T SAY ANYTHING"?

[301] A YES.

Q WERE THOSE HIS EXACT WORDS?

A NO.

Q WHAT WERE HIS EXACT WORDS?

A "DON'T SAY SHIT."

Q AND CAN YOU DESCRIBE THE TONE OF VOICE WHEN HE SAID IT? WAS HE JOKING OR SERIOUS?

A SERIOUS.

Q YOU INDICATED EARLIER THAT YOU NEVER SAW PAUL WITH THE GUN; IS THAT RIGHT?

A THAT IS CORRECT.

Q DO YOU RECALL SAYING SOMETHING DIFFERENTLY TO THE DETECTIVES IN AN OCTOBER 1995 INTERVIEW?

A NO, I DON'T.

Q WOULD IT ASSIST YOU --

A I DON'T RECALL.

Q I'M SORRY.

MS. NAKAKI: I STEPPED ON THE WITNESS' STATEMENT.

THE WITNESS: NO, I DON'T RECALL.

Q BY MS. NAKAKI: WOULD IT ASSIST YOU TO REVIEW YOUR TRANSCRIPT OF OCTOBER OF 1995 OF THE INTERVIEW?

A YES.

MS. NAKAKI: I'LL SHOW THE WITNESS PAGE 21, LINES 19 THROUGH 21.

A (COMPLIES).

Q DOES THAT HELP YOU, SIR?

A YES.

Q DO YOU RECALL WHETHER OR NOT PAUL -- OR [302] WHETHER OR NOT YOU SAW PAUL WITH A GUN THAT EVENING WHEN YOU ALL WERE BACK AT THE HOUSE AFTER THE INCIDENT AT THE PARKING LOT?

A YES.

Q AND DID YOU SEE PAUL WITH THE GUN?

A YES.

Q WHERE DID YOU SEE PAUL WITH THE GUN?

A IN MY BEDROOM.

Q WAS PAUL HOLDING THE GUN?

A YES, HE WAS.

Q DO YOU REMEMBER WHICH HAND PAUL WAS HOLDING THE GUN IN?

A NO, I DON'T.

Q BUT YOU DID NOT SEE WHAT PAUL DID WITH THE GUN AFTER YOU SAW IT IN HIS HAND; IS THAT CORRECT?

A THAT IS CORRECT.

Q NOW, YOU HAD STATED THAT AT SOME POINT YOU BECAME AWARE THERE WAS A GUN UNDER YOUR BED, CORRECT?

A THAT IS CORRECT.

Q WAS THIS THE SAME GUN YOU SAW PAUL HAVE IN HIS HAND?

A YES.

Q WHAT DID YOU DO WITH THAT GUN?

A WE HID IT.

Q WHEN YOU SAY "WE HID IT," WHO HID IT?

A MYSELF AND MIKE AND PAUL.

Q WHO ACTUALLY TOOK THE GUN?

A PAUL.

[303] Q WHAT DID PAUL DO WITH THE GUN, IF YOU KNOW?

A WE TOOK IT TO THE PARK.

Q WHEN YOU SAY "WE HID IT," PAUL TOOK THE GUN, YOU WENT WITH HIM, CORRECT?

A YES.

Q AND MIKE WENT WITH HIM?

A YES.

Q DO YOU KNOW THE NAME OF THE PARK?

A THE LAKEVIEW PARK.

Q NOW, MR. RIVERA, THERE'S A GENTLEMAN SITTING IN COURT TODAY, THE DISTINGUISHED GENTLEMAN HERE IN THE BLUE SUIT?

A YES.

Q DO YOU RECOGNIZE HIM?

A YES, I DO.

Q MS. NAKAKI: FOR THE RECORD, THIS IS MR. WILSON.

Q AT ANY TIME DID YOU REQUEST OF THE D.A. OFFICE OR ANYBODY TO HAVE AN ATTORNEY REPRESENT YOU?

A NO, I DID NOT.

Q HOWEVER, AT THE DIRECTION OF THE COURT YOU WERE ASKED TO SPEAK WITH AN ATTORNEY, CORRECT?

A THAT IS CORRECT.

Q YOU AT NO TIME ASKED FOR AN ATTORNEY, CORRECT?

A CORRECT.

MS. NAKAKI: AND FOR THE RECORD, MR. WILSON IS AN ATTORNEY?

THE COURT: YES, FOR THE RECORD, MR. WILSON IS AN ATTORNEY.

[304] Q BY MS. NAKAKI: DID YOU SPEAK WITH MR. WILSON?

A YES, I DID.

Q AND PRIOR TO TODAY YOU SPOKE WITH ME REGARDING THIS CASE, CORRECT?

A THAT'S CORRECT.

Q AND YOU WERE WILLING TO TESTIFY IN THIS CASE, CORRECT?

MR. GUTIERREZ: OBJECTION, YOUR HONOR; LEADING.

THE COURT: OVERRULED.

THE WITNESS: CORRECT.

Q BY MS. NAKAKI: AND YOU WERE WILLING TO TESTIFY WITHOUT SPEAKING WITH AN ATTORNEY, CORRECT?

A CORRECT.

Q AND JUST SO THAT WE ARE CLEAR, YOU'RE AWARE THAT YOU WERE GRANTED WHAT IS CALLED IMMUNITY FOR YOUR TESTIMONY TODAY?

A YES.

Q DID YOU REQUEST OF THE D.A. OFFICE OR OF THE COURT TO HAVE IMMUNITY TO TESTIFY TODAY?

A NO, I DID NOT.

Q IN OTHER WORDS, YOU WERE WILLING TO TESTIFY WITHOUT ANY IMMUNITY TODAY, CORRECT?

A THAT'S CORRECT.

Q HOWEVER, YOU WERE GRANTED IMMUNITY. AND WHY WAS THAT, MR. RIVERA?

MR. GUTIERREZ: OBJECTION; CALLS FOR A LEGAL CONCLUSION.

THE COURT: SUSTAINED.

[305] Q DID MR. WILSON RECOMMEND TO YOU TO -- LET ME BACK UP HERE.

DID MR. WILSON --

MR. GUTIERREZ: YOUR HONOR, I'LL OBJECT ON FOUNDATION GROUNDS JUST BY THE PRELIMINARY FORM OF THE QUESTION.

MR. BERNSTEIN: ALSO JOIN; HEARSAY.

THE COURT: VERY WELL.

Q BY MS. NAKAKI: JUST SO THAT WE ARE CLEAR, MR. RIVERA, TODAY YOU WOULD HAVE COME TO COURT AND TESTIFIED OUT ANY GRANT OF IMMUNITY, RIGHT?

MR. GUTIERREZ: OBJECTION; ASKED AND ANSWERED.

THE COURT: OVERRRULED.

THE WITNESS: YES.

Q BY MS. NAKAKI: NOW, YOU IDENTIFIED TWO MEN IN COURT TODAY, PAUL SOTO AND MICHAEL ALVARADO, CORRECT?

A YES.

Q MICHAEL ALVARADO ACTUALLY IS A -- WAS A PRETTY GOOD FRIEND OF YOURS, CORRECT?

A YES.

Q AND IN SEPTEMBER -- LET'S TALK ABOUT SEPTEMBER 22 OF 1995. DO YOU KNOW WHERE MR. ALVARADO WAS LIVING?

A YES.

Q WHERE?

A IN PICO RIVERA.

Q AND HOW FAR WAS MIKE'S HOUSE IN PICO RIVERA FROM YOUR HOUSE BEHIND THE SHOPPING CENTER IN SANTA FE SPRINGS?

[306] A I'M NOT SURE OF THAT.

Q WAS IT MORE THAN A MILE?

A NO.

Q HALF A MILE?

A YES.

Q AND THAT DAY DID MICHAEL ALVARADO, IF YOU KNOW, COME FROM HIS HOUSE TO GO TO YOUR HOUSE?

A YES.

Q DID HE WALK, IF YOU KNOW?

A NO.

Q HE DID NOT WALK?

A NO.

Q WAS THE DISTANCE BETWEEN YOUR HOUSE BY THE SHOPPING CENTER AND MR. ALVARADO'S HOUSE IN PICO RIVERA A DISTANCE THAT'S A LITTLE FURTHER THAN WALKING DISTANCE?

A YES.

Q YOU PREFER TO DRIVE THAT DISTANCE, CORRECT?

A YES.

MS. NAKAKI: NOTHING FURTHER.

THE COURT: WHY DON'T WE GO AHEAD AND TAKE A BREAK.

LADIES AND GENTLEMEN, WE'LL TAKE A 15-MINUTE BREAK, RECONVENE A LITTLE AFTER 11:00, 11:05.

THIS IS THE FIRST TIME WE WILL TEST THE ADMONITION THAT I'VE BEEN GIVING TO YOU NOT TO TALK ABOUT THIS CASE AMONGST YOURSELVES OR ANYBODY ELSE, AND DON'T MAKE UP YOUR MIND. KEEP AN OPEN MIND.

(AT 10:50 A.M. THE JURY WAS EXCUSED FOR [307] A RECESS UNTIL 11:05 A.M.)

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT OUT OF THE PRESENCE OF THE JURY.)

THE COURT: BACK ON THE RECORD. READY FOR THE JURY?

MR. GUTIERREZ: YOUR HONOR, APPARENTLY WE HAVE SOMEONE FROM THE PRESS HERE, AND I GUESS -- WHICH IS FINE. I HAVE NO OBJECTION TO

THE PRESS BEING HERE. THEY ARE ENTITLED TO BE HERE. I ANTICIPATE THEY'LL WRITE SOME KIND OF ARTICLE ABOUT THE CASE. I DON'T KNOW WHAT THE CONTENT OF THE ARTICLE IS, BUT I'M SURE IT'S ABOUT THIS CASE.

WHAT CONCERNED ME IS THE LAST ARTICLE WHERE APPARENTLY MR. SOTO MAY HAVE BEEN INVOLVED IN AN INCIDENT. I DON'T WANT THAT TO SPILL OVER TO MY CLIENT, AND MAYBE WE SHOULD ADMONISH THE JURY NOT TO READ ANY ARTICLES ABOUT THE CASE.

THE COURT: AT HE CONCLUSION OF THE SESSION I'LL ASK THEM NOT TO READ THE NEWSPAPERS. IN FACT, MAYBE I CAN BE MORE SPECIFIC, IF WE CAN, ABOUT A PARTICULAR NEWSPAPER. THERE'S NO WAY I AM GOING TO TRY TO EDIT WHAT IS WRITTEN IN THE PRESS BEFOREHAND.

MR. GUTIERREZ: PERHAPS JUST NEWSPAPERS IN GENERAL. RATHER THAN FOCUS ON A PARTICULAR NEWSPAPER.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT IN THE PRESENCE OF THE JURY.)

[308] THE COURT: BACK ON THE RECORD NOW.

JUROR 8: IT'S A LITTLE HARD TO HEAR HIM SOMETIMES. HIS WORDS GET LOST.

THE COURT: OKAY. MR. GUTIERREZ, PULL THE MICROPHONE UP BENEATH YOUR CLIENT THERE. MR. GUTIERREZ, GO AHEAD.

+CROSS-EXAMINATION

BY MR. GUTIERREZ:

Q GOOD MORNING, MR. RIVERA. MY NAME IS JOSEPH GUTIERREZ AND I'LL ASK YOU SOME QUESTIONS. I REPRESENT MICHAEL ALVARADO, THE YOUNG MAN AT THE END OF COUNSEL TABLE.

IF YOU DON'T UNDERSTAND A QUESTION, PLEASE LET ME KNOW AND I'LL REPEAT IT. OKAY?

A OKAY.

Q AND IF YOU NEED A BREAK OR ANYTHING, LET US KNOW AND WE'LL ACCOMMODATE YOU. OKAY?

A YES.

Q NOW, MANUEL -- MR. RIVERA YOU WERE ASKED SOME QUESTIONS ABOUT IMMUNITY. I'M NOT GOING TO GO INTO THE CONTENTS OF THE CONVERSATION YOU HAD WITH YOUR LAWYER. ISN'T IT TRUE YOU HAD CONVERSATIONS WITH YOUR LAWYER?

A YES.

Q AND FOLLOWING YOU CONVERSATIONS WITH YOUR LAWYER IMMUNITY WAS OBTAINED FOR YOU; IS THAT CORRECT?

A THAT IS CORRECT.

Q AND YOU UNDERSTAND THAT JUDICIAL IMMUNITY MEANS YOU CANNOT BE PROSECUTED; IS THAT CORRECT?

A YES.

[309] Q NOW, MR. RIVERA, YOU INDICATED DURING THE LATTER PORTIONS OF YOUR TESTIMONY HERE TODAY THAT THE -- TO THE JURY THAT THAT NIGHT YOU AND MIKE AND PAUL WENT TO HIDE THE GUN; IS THAT CORRECT?

A YES.

Q ISN'T IT TRUE THAT BEFORE TAKING THIS WITNESS STAND ON FEBRUARY 21ST OF THIS YEAR YOU WENT TO THE DISTRICT ATTORNEY OFFICE AND

HAD AN INTERVIEW WITH THE D.A. AND THE D.A. INVESTIGATOR?

A THAT IS CORRECT.

Q AND THAT D.A. INVESTIGATOR -- THE DISTRICT ATTORNEY WAS MS. NAKAKI, THE LADY HERE?

A YES.

Q AND THERE WAS D.A. INVESTIGATOR; IS THAT CORRECT?

A THAT IS CORRECT.

Q AND YOU TOLD THEM THAT BOTH SUSPECTS, MEANING PAUL AND MIKE, LEFT THE HOUSE TO HIDE THE GUN. YOU DID NOT GO WITH THEM. YOU DID NOT GO WITH THEM; IS THAT CORRECT?

A YES.

Q SO ON FEBRUARY 21ST OF 1997 IN THE D.A. OFFICE YOU WERE ASKED ABOUT HIDING THE GUN

AND YOU DECIDE THAT YOU WENT TO HIDE THE GUN; IS THAT CORRECT?

A YES.

Q AND THAT WAS A LIE, CORRECT?

A YES.

Q YOU LIED TO THE DISTRICT ATTORNEY, CORRECT, WHEN YOU SAID THAT?

[310] A YES.

Q AND YOU LIED TO THE DISTRICT ATTORNEY INVESTIGATOR, CORRECT?

A YES.

Q AND IN FACT, YOU WERE INTERVIEWED BY THE POLICE IN THIS CASE ON MORE THAN ONE OCCASION, CORRECT?

A THAT'S CORRECT.

Q AND YOU EVEN LIED TO THE POLICE AT TIMES, CORRECT?

A YES.

Q IN FACT, THEY CONFRONTED YOU WITH YOUR LIES AND SAID YOU LIED TO THEM, CORRECT?

A YES.

Q NOW, MR. RIVERA, ABOUT HOW MANY TIMES WERE YOU INTERVIEWED BY THE POLICE?

A I'M NOT SURE ON THAT.

Q THREE OR FOUR TIMES, FIVE TIMES?

A THREE OR FOUR TIMES.

Q AND HOW MANY TIMES DO YOU THINK YOU'VE COME TO THE COURTHOUSE, SAY, THIS COURTHOUSE IN NORWALK?

A THREE TIMES.

Q AND THIS BEING YOUR THIRD TIME OR YOU'VE BEEN HERE TREE TIMES PRIOR TO TODAY?

A THREE TIMES PRIOR.

Q THIS WOULD BE YOUR FOURTH VISIT?

A YES.

Q AND, SIR, DO YOU RECALL EVER GOING TO THE MUNICIPAL COURT WHEN THIS CASE WAS IN THE MUNICIPAL COURT?

[311] A YES.

Q ABOUT HOW MANY TIMES DID YOU GO TO THAT COURTHOUSE?

MS. NAKAKI: OBJECTION; RELEVANCE, YOUR HONOR.

THE COURT: OVERRULED.

THE WITNESS: FOUR OR FIVE.

Q BY MR. GUTIERREZ: FOUR OR FIVE TIMES. YOU -- THIS IS THE FIRST TIME YOU'VE EVER GIVEN SWORN TESTIMONY?

A YES.

Q FIRST TIME YOU'VE EVER TESTIFIED?

A YES.

Q NOW, LAST YEAR AT THE COURTHOUSE, THE MUNICIPAL COURT HOUSE IN THE COURTROOM

THERE AT THE BACK OF THE COURTROOM, DID I INTRODUCE MYSELF TO YOU?

A YES, YOU DID.

Q WAS I POLITE AND COURTEOUS?

A YES.

Q DID WE HAVE A CONVERSATION?

A YES, WE DID.

Q DID YOU TRY TO BE TRUTHFUL TO ME?

A YES.

Q TRY TO TELL ME -- GIVE ME THE BENEFIT OF YOUR BEST RECOLLECTION OF THE EVENTS OF THAT DAY?

A YES.

Q AND YOU ALSO SPOKE TO INVESTIGATOR FOR THE DEFENSE FOR MICHAEL ALVARADO, DAVE CORREA?

A YES, I DID.

Q WHEN YOU SPOKE TO DAVE CORREA, YOU SPOKE TO [312] HIM IN PERSON?

A YES.

Q HAD A LENGTHY CONVERSATION WITH HIM?

A YES.

Q DID YOU TRY TO BE HONEST AND TRUTHFUL WITH HIM?

A YES, I DID.

Q OKAY. ISN'T IT TRUE THAT YOU TOLD ME THAT YOU CAN'T REALLY SAY FOR SURE THAT MIKE SAID "LET'S GO"?

MS. NAKAKI: YOUR HONOR, I'LL OBJECT UNLESS THERE'S A BASIS.

THE COURT: COUNSEL, APPROACH.

(THE FOLLOWING PROCEEDINGS WERE HELD AT SIDEBAR.)

THE COURT: OBJECTION.

MS. NAKAKI: WELL, YOUR HONOR, UNLESS THERE WAS SOMEBODY ELSE PRESENT THAT CAN BE CALLED AS A WITNESS THAT MR. GUTIERREZ INTENDS TO PERMIT HIMSELF TO BE CALLED AS A WITNESS IF HIS ANSWER IS SOMEWHAT DIFFERENT THAT WHAT HE EXPECTS, I SEE A PROBLEM.

THE COURT: WAS THIS CONVERSATION AT THE SAME TIME MR. CORREA WAS PRESENT?

MR. GUTIERREZ: NO. THIS WAS A CONVERSATION IN THE REAR OF THE COURTROOM, BUT IT'S MY UNDERSTANDING THAT HE'S GOING TO ADMIT THAT HE TOLD ME THAT HE SAID THAT IN THE PRESENCE OF HIS LAWYER, SO I CAN SAY IN GOOD FAITH I KNOW [313] WHAT THE RESPONSE IS.

I ALSO KNOW HE WAS ASKED THE SAME QUESTION BY MR. CORREA, AND MR. CORREA IS

AVAILABLE AS A WITNESS AND HE'S ON MY WITNESS LIST.

THE COURT: BASED ON THAT REPRESENTATION, GO AHEAD.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT IN THE PRESENCE OF THE JURY.)

BY MR. GUTIERREZ:

Q SIR, MR. MANUEL RIVERA, SIR, YOU AND I HAD A CONVERSATION LAST YEAR IN THE COURTROOM IN WHITTIER; IS THAT CORRECT?

A YES.

Q AND YOU INDICATED YOU'D TRY TO BE AS HONEST AS YOU COULD WITH ME?

A YES.

Q ISN'T IT A FACT THAT YOU TOLD ME THAT YOU REALLY COULDN'T SAY FOR SURE THAT YOU EVER HEARD MIKE SAY ANYTHING OR SAYING TO THE EFFECT "LET'S DO IT"?

A THAT IS CORRECT.

Q WAS THAT THE TRUTH?

A YES.

Q SO YOU CAN'T SAY FOR SURE THAT MIKE DID SAY THAT?

A CORRECT.

Q AND YOU ALSO SPOKE TO MY INVESTIGATOR, DAVE CORREA?

[314] A YES.

Q AND WHEN YOU SPOKE TO MR. CORREA, IT WAS ABOUT A TWO-HOUR INTERVIEW?

A YES.

Q AND DID YOU ALSO INDICATE TO HIM THAT YOU REALLY COULD NOT SAY FOR SURE THAT MIKE EVER SAID "LET'S DO IT"?

A THAT'S CORRECT.

Q WAS THAT THE TRUTH?

A YES.

Q I NOTICE THIS MORNING A COUPLE TIMES YOU HAD TO REVIEW PORTIONS OF YOUR TRANSCRIPT. DO YOU REMEMBER THE D.A. SHOWING IT TO YOU?

A YES.

Q DO YOU THINK THAT YOUR MEMORY HAS FADED A LITTLE BIT OVER TIME?

A YES.

Q THINGS MIGHT HAVE BEEN A LITTLE CLEARER MONTHS AGO THAN THEY ARE TODAY?

A YES.

Q NOW, AT -- WHEN WAS THE FIRST TIME THAT YOU EVER TOLD THE DISTRICT ATTORNEY THAT PAUL SOTO SAID "I'LL SPLIT IT"?

A SORRY.

Q THIS MORNING YOU SAID SOMETHING TO THE EFFECT THAT PAUL SOTO SAID "LET'S JACK, " SOMETHING TO THE EFFECT "AND I'LL SPLIT THE MONEY." DO YOU REMEMBER THAT?

A YES.

[315] Q YOU NEVER SAID THAT BEFORE IN YOUR FIRST INTERVIEW WITH THE POLICE; YOU NEVER TOLD THEM THAT, CORRECT, "LET'S SPLIT IT"?

A YES.

Q THE VERY FIRST TIME THAT YOU'VE EVER HEARD THAT STATEMENT WAS, I GUESS, AFTER 1997, CORRECT?

A YEAH.

Q AND THESE CONVERSATIONS THAT OCCURRED BETWEEN MR. SOTO, DESMOND, VALERIE AND WHOEVER ELSE WAS THERE, WAS THAT BY THE PLANTER?

A YES.

Q AND WHICH PLANTER WAS IT?

A NEAREST TO THE PHONE.

Q THE PLANTER NEAREST TO THE PHONE?

A YES.

Q IS IT THE PLANTER SORT OF BETWEEN THE DONUT SHOP AND THE PHONES?

A THAT IS CORRECT.

Q WOULD IT BE THE PLANTER THAT'S ON THE SIDEWALK AREA?

A YES.

Q SO THAT WOULD BE SORT OF THE PLANTER THAT SEPARATES JACK'S MARKET AND THE DONUT SHOP?

A YES.

Q NOW, WHEN THIS CONVERSATION OCCURRED ABOUT "LET'S JACK", YOU WERE ON THE PHONE TALKING, CORRECT?

A YES.

Q WHO WERE YOU TALKING TO?

[316] A MIKE'S COUSIN.

Q SO -- IN FACT, YOU MADE SEVERAL PHONE CALLS THAT NIGHT?

A YES.

Q TALKED TO MORE THAT ONE PERSON?

A YES.

Q WHILE WERE YOU TALKING ON THE PHONE, WAS ANYBODY TALKING ON ANY OTHER PHONES?

A YES.

Q AND SO WHILE YOU WERE TALKING ON THE PHONE, PEOPLE -- SOMEONE MAY HAVE BEEN

TALKING ON ANOTHER PHONE NEXT TO YOU, CORRECT?

A CORRECT.

Q AND THE CONVERSATION ABOUT "LET'S JACK" WAS SOMEWHERE BY THE PLANTER, CORRECT?

A CORRECT.

Q AND YOU REALLY CAN'T SAY FOR SURE MIKE EVER REALLY SAYS "LET'S DO IT," CORRECT?

A CORRECT.

A CORRECT.

MR. GUTIERREZ: YOUR HONOR, MAY I APPROACH?

THE COURT: YES, YOU MAY.

MR. GUTIERREZ: PREVIOUSLY MARKED DEFENSE C, I'D LIKE TO SHOW THIS TO THE WITNESS.

(WHEREUPON, A PHOTOGRAPH OF PHONES, DEFENSE EXHIBIT C, WAS MARKED FOR IDENTIFICATION.)

[317] Q BY MR. GUTIERREZ: SIR, DIRECTING YOUR ATTENTION TO WHAT HAS BEEN MARKED DEFENSE EXHIBIT C, DOES THIS LOOK LIKE THE PHONES?

A YES.

Q AND THE DONUT SHOP WOULD BE OFF TO THE RIGHT OF THE PHOTOGRAPH; IS THAT CORRECT?

A YES.

Q IF YOU WERE ON THE PHONE, YOU WOULD BE UNABLE TO LOOK INTO THE DONUT SHOP, THAT WOULD BE SOMEWHERE TO THE RIGHT OF THE PHOTOGRAPH, CORRECT?

A CORRECT.

Q AND THE PHONES ARE SORT OF IN AN ALCOVE, A RECESSED AREA. FOR EXAMPLE, THE WALL -- LET'S ASSUME THIS BILLBOARD OR THIS CORKBOARD WERE THE WALL THAT'S DEPICTED IN DEFENSE EXHIBIT C, AND THE PHONES WOULD BE TO THE LEFT OF THE CORKBOARD, THEY WOULD SORT BE INSIDE IN A RECESSED AREA, CORRECT?

A CORRECT.

Q THE PHONES ARE NOT PARALLEL WITH THE WALL THAT RUNS ALONG JACK'S MARKET, TRUE?

A TRUE.

Q NOW, IN YOUR INITIAL INTERVIEW WITH THE POLICE, YOU ONLY ATTRIBUTE THE WORDS "LET'S JACK" TO MR. SOTO ON ONE OCCASION, CORRECT?

A YES.

Q YOU NEVER SAID THAT HE SAID IT MORE THAN ONCE, TRUE?

A TRUE.

[318] Q AND WHEN YOU HEARD IT THAT ONE TIME, YOU BELIEVE MIKE WAS WALKING OUT OF THE DONUT STORE, CORRECT?

A CORRECT.

Q AND MIKE WAS TALKING AS IT WAS SAID, CORRECT?

A YES.

Q AND YOU WERE ON THE PHONES TALKING?

A YES.

Q IN FACT, IT WASN'T UNTIL AFTER PEOPLE WENT TO THE TRUCK THAT YOU ACTUALLY GOT OFF THE PHONE; ISN'T THAT TRUE?

A THAT IS TRUE.

Q AND YOU WERE WATCHING FROM THE PAY PHONES?

A YES.

Q AND THOSE ARE THOSE PHONES ON DEFENSE C?

A YES.

Q SIR, I WOULD LIKE TO DIRECT YOUR ATTENTION TO WHAT HAS BEEN PREVIOUSLY MARKED DEFENSE D.

MR. GUTIERREZ: MAY I APPROACH, YOUR HONOR?

THE COURT: YES, YOU MAY

(WHEREUPON, A PHOTOGRAPH OF THE DONUT STORE, DEFENSE EXHIBIT D, WAS MARKED FOR IDENTIFICATION.)

Q BY MR. GUTIERREZ: LOOKING AT DEFENSE EXHIBIT D. DOES THIS APPEAR TO BE THE DONUT STORE YOU WERE REFERRING TO?

A YES.

[319] Q AND LOOKING TO THE LEFT OF DEFENSE EXHIBIT D, DOES THAT APPEAR TO BE THE PHONES THAT ARE IN THE ALCOVE?

A YES.

Q YOU INDICATED IT WAS THE PLANTER NEXT TO THE SIDEWALK BETWEEN THE DONUT STORE AND JACK'S. WOULD THIS BE THE PLANTER, SIR?

A YES.

Q SO SOMEWHERE AROUND THE DONUT SHOP THERE WAS A CONVERSATION OCCURRING; IS THAT CORRECT?

A THAT'S CORRECT.

Q THAT WAS A CONVERSATION YOU REFERRED TO DURING DIRECT AND RIGHT NOW, CORRECT?

A YES.

Q AND THAT WOULD BE SOMEWHERE AROUND THIS PLANTER?

A YES.

Q IN FRONT OF THE PLANTER OR SITTING ON THE PLANTER?

A YES.

Q SOMEWHERE IN THAT GENERAL AREA?

A YES.

MR. GUTIERREZ: YOUR HONOR, MAY I HAVE THE WITNESS --

Q WHY DON'T YOU JUST DRAW A CIRCLE AROUND APPROXIMATE AREA WHERE THAT CONVERSATION WAS OCCURRING "LET'S JACK."

A (WITNESS COMPLIES).

Q AND BASED ON YOUR ORIGINAL INTERVIEW, YOU ONLY [320] HEARD THAT STATEMENT ONCE, CORRECT?

A CORRECT.

Q AND AT THAT TIME MIKE WAS WALKING, CORRECT --

A YES.

Q -- FROM THE DONUT STORE?

A YES.

Q AND YOU ARE REALLY NOT SURE MIKE SAID ANYTHING, ARE YOU?

A NO, I'M NOT.

Q AND, SIR, ISN'T IT A FACT THAT IF SOMEONE IS AT THE PHONES, AS DEPICTED IN DEFENSE C, THAT PERSON WHO WAS ON ANY ONE OF THESE THREE PHONES WOULD BE UNABLE TO ACTUALLY SEE INSIDE THE DONUT STORE, CORRECT?

A CORRECT.

Q AND, SIR, ISN'T IT A FACT THAT IF SOMEONE WERE ON THE PHONE OR STANDING BY THE PHONE IN DEFENSE EXHIBIT C, THAT PERSON -- IT WOULD BE PHYSICALLY IMPOSSIBLE FOR THAT PERSON TO ACTUALLY SEE THE PLANTER AREA, CORRECT?

A CORRECT.

Q AND NOT ONLY IS THE PHONE IN AN ALCOVE, THE WALL THAT RUNS ACROSS COMES UP TO A PILLAR AND THAT PILLAR EXTENDS A LITTLE BIT?

A YES.

Q YOU WOULD HAVE TO BE TO THE RIGHT OF THE PILLAR TO BE ABLE TO SEE IT, THE RIGHT OF THE PILLAR IN DEFENSE C, TO ACTUALLY SEE INSIDE THE DONUT OR INSIDE THE DONUT OR --

A CORRECT.

[321] Q YOU WOULD HAVE TO BE TO THE RIGHT OF THE PILLAR TO SEE THIS AREA OF THE PLANTER THAT HAS BEEN MARKED IN DEFENSE D, THE AREA THAT YOU CIRCLED WHERE THE ALLEGED CONVERSATION OCCURRED, CORRECT?

A YES.

Q NOW, MY CLIENT, MR. ALVARADO, DID YOU EVER SEE HIM PRIOR TO HEARING THIS SHOT WITH A GUN?

A NO.

Q HAD YOU EVER SEEN A GUN THAT NIGHT PRIOR TO HEARING A SHOT?

A NO.

Q AT ANY TIME WHILE YOU WERE AT YOUR HOUSE WITH PEOPLE VISITING THERE, WAS THERE EVER ANY DISCUSSION ABOUT SHOOTING SOMEONE OR ROBBING SOMEONE?

A NO.

Q DID YOU EVER HEAR MIKE AT YOUR HOUSE TALK ABOUT STEALING SOMEBODY'S CAR OR TAKING SOMEBODY'S MONEY?

A NO.

Q ISN'T IT TRUE, SIR, THAT THE NIGHT OF THAT PARTY MIKE WAS GOING TO SPEND THE NIGHT AT YOUR HOUSE?

A YES.

Q AND ISN'T IT TRUE ALSO THAT MIKE ONLY LIVES A FEW BLOCKS FROM THIS STRIP MALL, WALKING DISTANCE; IS THAT CORRECT?

A MORE THAT A FEW BLOCKS.

Q WELL, IT'S HALF A MILE, ABOUT A HALF A MILE?

A RIGHT.

Q THE STRIP MALL ON TELEGRAPH ROAD?

[322] A YES.

Q AND THAT IS DIRECTLY EAST OF THE 605 FREEWAY, CORRECT?

A CORRECT.

Q AND MIKE LIVES ALMOST IMMEDIATELY WEST OF THE 605 FREEWAY, CORRECT?

A CORRECT.

Q HE HAS WALKED TO YOUR HOUSE BEFORE, HASN'T HE?

A YES.

Q SO HIS HOUSE IS WALKING DISTANCE TO THE MALL?

A YES.

Q AND HAVING KNOWN MIKE, DID YOU -- MIKE WOULD FREQUENT THAT MALL, HE WOULD GO THERE QUITE A BIT?

A YES.

Q THE TOWN CENTER, IS THAT ABOUT A BLOCK FROM THE MALL, BLOCK AND-A-HALF?

A BLOCK AND-A-HALF.

Q DO YOU KNOW IF MIKE EVER DID WORK AT THE TOWN CENTER?

A IF HE WORKED?

Q YES.

A YES.

Q AND BY THE WAY, DO YOU KNOW IF MIKE HAD MONEY THAT NIGHT?

A FROM MY KNOWLEDGE,YES.

Q HE HAD KNOWN?

A YES.

Q HE DIDN'T INDICATE HE WAS BROKE OR NEEDED [323] MONEY, DID HE?

A NO.

Q IN FACT, HE HAD MONEY?

A YES.

Q YOU INDICATED, SIR, THAT THERE WAS -- WAS IT LIKE A PARTY AT YOUR HOUSE OR SORT OF A GET-TOGETHER, OR WHAT?

A A GET-TOGETHER.

Q PEOPLE WOULD COME OVER AND BASICALLY SOCIALIZE, CORRECT?

A CORRECT.

Q YOUNG MEN AND YOUNG WOMEN?

A YES.

Q HOW LONG HAD YOU KNOWN MICHAEL ALVARADO PRIOR TO THIS INCIDENT, THE INCIDENT I'M REFERRING TO IS SEPTEMBER 23 OF 1995?

A A LITTLE OVER TWO YEARS.

Q IN THOSE TWO YEARS THAT YOU KNEW MICHAEL ALVARADO PRIOR TO SEPTEMBER 23 OF 1995, HAD YOU EVER SEEN HIM IN THE PRESENCE OF MR. SOTO?

A NO.

Q BASED ON YOUR KNOWLEDGE OF MICHAEL AND THE TIMES THAT YOU HAD SEEN HIM DURING THE TWO-YEAR PERIOD, DID YOU HAVE ANY REASON TO BELIEVE THAT PRIOR TO SEPTEMBER 23, 1995 THAT MY CLIENT KNEW PAUL SOTO?

A NO.

Q DID YOU KNOW PAUL SOTO PRIOR TO SEPTEMBER 23, 1995?

[324] A NO, I DID NOT.

Q WHEN YOU SPOKE TO THE POLICE THE SECOND TIME, THEY TOLD YOU THAT YOU HAD OMITTED TELLING THEM THE NAMES OF TWO OTHER INDIVIDUALS THAT HAD BEEN AT THE PARTY EARLIER; IS THAT CORRECT?

A YES.

Q AND YOU TOLD THEM THAT BASICALLY YOU JUST DIDN'T WANT TO GET THEM INVOLVED; IS THAT CORRECT?

A YES.

Q THEY SEEMED PRETTY UPSET, DIDN'T THEY?

A YES.

Q AFTER YOU WERE INTERVIEWED BY THE POLICE THE FIRST TIME, DID YOU EVER SPEAK TO A SONJA RIOS?

A SONJA RIOS, YES.

Q AND DID YOU EVER TELL HER YOU DIDN'T KNOW WHAT WAS GOING TO HAPPEN AFTER YOU

SPOKE TO THE POLICE, THAT YOU DIDN'T KNOW IF YOU WERE GOING TO BE ARRESTED AND YOU DIDN'T KNOW WHAT WAS GOING TO HAPPEN?

MS. NAKAKI: YOUR HONOR, OBJECTION UNLESS THERE IS FOUNDATION.

MR. GUTIERREZ: I JUST ASKED IF HE EVER SAID THAT.

THE COURT: OVERRULED.

YOU MAY ANSWER.

Q BY MR. GUTIERREZ: DID YOU EVER SAY THAT TO HER?

A YES.

Q SO YOU WERE CONCERNED THAT YOU MIGHT BE ARRESTED OR CHARGED WITH SOME KIND OF OFFENSE, CORRECT?

[325] A CORRECT.

Q NOW, YOUR HOUSE, SIR, HAD A BACK GATE?

A YES.

Q AND THAT GATE LEADS INTO LIKE A SMALL STREET THAT GOES INTO THE MALL, CORRECT?

A YES.

Q ABOUT HOW FAR IS YOUR HOUSE FROM THE MALL?

A FROM THAT BACK GATE, LET'S SAY FROM THAT BACK GATE TO THE DRIVEWAY THAT ENTERS THE MALL AT THE REAR OF YOUR HOUSE. SAY FROM ME TO YOU OR --

A FURTHER.

Q A LITTLE FURTHER. ABOUT THIS FAR (INDICATING)?

A A LOT FURTHER.

Q MAYBE THE WALL?

A EVEN FURTHER.

Q I'M TALKING ABOUT THE BACK GATE, THE GATE THAT LEADS INTO THE ALLEY INTO THE STREET.

A UH-HUH.

Q I'M REFERRING TO YOUR HOUSE DOOR, THE PROPERTY LINE, THE GATE THAT LEADS INTO THE ALLEY THAT LEADS INTO THE STREET THAT GOES INTO THE MALL.

A FROM MYSELF TO THE WALL.

Q FROM YOURSELF TO THE WALL.

THE COURT: APPROXIMATELY 34 FEET.

Q BY MR. GUTIERREZ: AND IT WAS COMMON AROUND THE TIME OF SEPTEMBER 23 FOR YOU TO GO TO THE PHONES AND USE THOSE PHONES IN FRONT OF JACK'S MARKET, CORRECT?

[326] A YES.

Q AND IT WAS ALSO COMMON FOR MIKE TO GO TO THE PHONE AND USE THOSE PHONES IN FRONT OF JACK'S MARKET WHENEVER HE WAS AT YOUR HOUSE?

A YES.

Q THERE WAS NOTHING OUT OF THE ORDINARY WHEN EVERYBODY AROUND MIDNIGHT WENT OUT TO THE MALL AREA AND USED THE PHONES, CORRECT?

A CORRECT.

Q AND WHEN YOU ENTERED THE MALL, THERE IS EVEN A POLICE STATION AT THE MALL, ISN'T THERE, A SUBSTATION?

A YES.

Q AND THAT SUBSTATION IS RATHER CLOSE TO THE ENTRANCE OF THE MALL WHERE YOU LIVE, BY THE SITE WHERE YOU LIVE, CORRECT?

A CORRECT.

Q AND THE NIGHT THAT THIS INCIDENT OCCURRED, THE NIGHT THAT THE SHOOTING OCCURRED, THERE WERE POLICE AT THAT MALL, CORRECT?

A YES.

Q AND YOU KNEW THERE WERE POLICE AT THAT MALL, CORRECT?

A YES.

Q AND MIKE, YOU HAD SEEN HIM AT THAT MALL MANY TIMES PRIOR TO SEPTEMBER 23, CORRECT?

A CORRECT.

Q HE HUNG OUT THERE QUITE A BIT, CORRECT?

A YES.

[327] Q DID YOU EVER SEE MIKE, MICHAEL ALVARADO, MR. ALVARADO ON THE DRIVER'S SIDE OF THAT WHITE TRUCK?

A NO.

Q DID YOU EVER SEE MICHAEL ALVARADO OR OBSERVE WHAT APPEARED TO BE A CONVERSATION BETWEEN MICHAEL ALVARADO AND THE DRIVER OF THAT TRUCK?

A NO.

Q DID YOU EVER OBSERVE MICHAEL ALVARADO TO TOUCH THE MAN AT ALL?

A NO.

Q DID YOU EVER SEE MICHAEL ALVARADO ENTER THE MAN'S TRUCK?

A NO.

Q DID YOU EVER SEE MICHAEL ALVARADO MOVE THINGS AROUND THE BACK OF THE TRUCK OR THE BED OF THE TRUCK?

A NO.

Q DID YOU EVER SEE MICHAEL ALVARADO IN ANY WAY TOUCH THAT TRUCK?

A NO.

Q IN FACT, HE WAS BY THE REAR PASSENGER TIRE, CORRECT?

A CORRECT.

Q HE WAS AWAY FROM THE REAR PASSENGER TIRE SEVERAL FEET, CORRECT?

A YES.

Q AND YOU NEVER EVER OBSERVED HIM GO OVER TO THE DRIVER'S SIDE OF THE VEHICLE, CORRECT?

A THAT'S CORRECT.

[328] Q AND THIS SHOOTING THAT OCCURRED, IT ALL HAPPENED VERY QUICKLY?

A YES.

Q WITHIN 30 SECONDS OF YOU SEEING PEOPLE BEGINNING TO WALK OVER THERE?

A YES.

Q IN FACT, YOU RECALL THAT, IS THAT CORRECT, WITHIN 30 SECONDS?

A YES,

Q YOU WERE UNABLE TO HEAR ANY CONVERSATION AT THE DUMPSTER WHILE YOU WERE STANDING BY THE PHONES; IS THAT CORRECT?

A THAT IS CORRECT.

Q AND INITIALLY YOU TOLD THE POLICE THAT YOU WERE ABLE TO HEAR IT, BUT THEN YOU SAID "NO -- WELL, YES, HE TOLD ME WHAT HE SAID"; IS THAT CORRECT?

A THAT'S CORRECT.

Q IS THERE ANY REASON WHY INITIALLY YOU TOLD THE POLICE YOU WERE ABLE TO HEAR A CONVERSATION AT THE DUMPSTER WHEN YOU WERE STANDING BY THE PHONES?

A NO.

Q KIND OF CONFUSED?

A YES.

Q YOU DIDN'T KNOW IF YOU HAD HEARD IT FROM SOMEONE OR YOU ACTUALLY HEARD IT YOURSELF AT THAT TIME, CORRECT?

A CORRECT.

Q AND LET ME REPHRASE THAT. I MEAN, CONFUSED, [329] YOU ACTUALLY HEARD IT THAT

NIGHT OR SOME OTHER DAY LATER SOMEBODY MENTIONED IT TO YOU, CORRECT?

A YES.

Q AND THE REASON YOUR PERCEPTION WAS A LITTLE CONFUSED IT WOULD BE FAIR TO SAY THAT NIGHT YOU'D BE PARTYING A LITTLE BIT, CORRECT?

A YES.

Q YOU WERE TELLING US ABOUT DRINKING TWO 40-OUNCERS?

A YES.

Q AND SUBSEQUENTLY DRINKING MORE BEER?

A YES.

Q AND EVEN DRINKING WINE?

A YES.

Q AND SO OVER A FEW HOURS YOU WERE PRETTY MUCH DRINKING CONTINUOUSLY?

A THAT'S CORRECT.

Q WHAT ABOUT MARIJUANA? AND IT'S OKAY, YOU HAVE IMMUNITY. DID YOU SMOKE ANY MARIJUANA THAT NIGHT?

A YES.

Q HOW MUCH MARIJUANA DID YOU SMOKE?

A A JOINT.

Q COULD IT HAVE BEEN MORE THAN A JOINT OVER THE COURSE OF THAT FEW HOURS?

A NO. THAT WAS IT.

Q BUT MAYBE A FULL JOINT?

A YES.

Q OKAY. BY A "FULL JOINT," I MEAN ONE FOR [330] YOURSELF AS OPPOSED TO PASSING IT AROUND?

A PASSING IT AROUND.

Q THAT MARIJUANA, DID YOU SMOKE IT THROUGHOUT THE EVENING BEEORE THE SHOOTING?

A YES, IT WAS BEFORE.

Q BEFORE?

A YES.

Q HOW LONG BEFORE THE SHOOTING WAS IT THAT YOU WERE SMOKING MARIJUANA?

A MAYBE TWO HOURS BEFORE.

Q TWO HOURS BEFORE. COULD IT HAVE BEEN CLOSER IN TIME?

A NO.

Q DID YOU EVER LOOK AT THE WATCH AND CHECK YOUR WATCH WHEN YOU WERE SMOKING?

A NO.

Q YOU JUST PRETTY MUCH WOULD SMOKE MARIJUANA AND DRINK AND PARTY, THAT'S WHAT EVERYBODY WAS DOING, HAVING A GOOD TIME, CORRECT?

A CORRECT.

Q IT WOULD BE FAIR TO SAY THAT DRINKING TWO 40-OUNCER BEERS, DRINKING WINE, DRINKING SOME ADDITIONAL BEER AND SMOKING MARIJUANA AFFECTED YOUR MIND A LITTLE BIT?

A YES.

Q MAYBE A LOT?

A YES.

Q PRETTY STONED?

A NO.

[331] Q SOMEWHAT?

A YES.

Q AND THAT'S WHY WHEN YOU INITIALLY TOLD THE POLICE YOU HEARD A CONVERSATION AT THE DUMPSTER AND LATER ON SAYING, WELL, SOMEBODY TOLD YOU ABOUT A CONVERSATION AT THE DUMPSTER IS BECAUSE YOUR PERCEPTION WAS A LITTLE OFF THAT NIGHT?

A YES.

Q WHEN MR. SOTO LATER THAT EVENING SAID "DON'T SAY ANYTHING" OR "DON'T SAY SHIT," THAT STATEMENT WAS ALSO DIRECTED AT MIKE, CORRECT?

A CORRECT.

Q SO IT WAS DIRECTED AT YOU AND MIKE?

A YES.

Q AND MIKE WAS PRETTY UPSET ABOUT WHAT HAPPENED, WASN'T HE?

A YES.

Q HE WAS ANGRY, WASN'T HE?

A YES.

Q AND YOU WERE UPSET?

A YES.

Q AND YOU WERE ANGRY?

A YES.

Q AND YOU WERE FRIGHTENED?

A YES.

Q AND MIKE WAS FRIGHTENED?

A YES.

Q AND THE DUMPSTER WHERE THIS INCIDENT OCCURRED, [332] SIR, IS --

MR. GUTIERREZ: YOUR HONOR, MAY I APPROACH WITH DEFENSE EXHIBIT A, WHAT HAS PREVIOUSLY BEEN MARKED AS DEFENSE EXHIBIT A.

(WHEREUPON, A PHOTOTOGRAPH OF DUMPSTER, DEFENSE EXHIBIT A, WAS MARKED FOR IDENTIFICATION.)

Q BY MR. GUTIERREZ: WOULD BE THIS DUMPSTER HERE, CORRECT, WHERE I MARKED DEFENSE A, THIS WOULD BE THE DUMPSTER, CORRECT?

A CORRECT.

Q AND THE DONUT STORE WOULD BE THAT AREA AT THE BACK OF THE PICTURE TO THE LEFT WHERE IT SAYS DONUTS AND MORE DONUTS AND MORE?

A YES.

Q AND BETWEEN WHERE IT SAYS DONUTS ARE CARS THAT CAN PARK FACING THE DONUT SHOP, CORRECT?

A YES.

Q AND CARS THAT CAN PARK FACING THE DUMPSTER?

A YES.

Q AND THE TRUCK WAS PARKED -- IT WAS PARKED WITH THE DRIVER'S SIDE FACING THE DUMPSTER?

A YES.

Q SO THE HEADLIGHTS WOULD BE GOING TO THE RIGHT OF THE CAR TO THE RIGHT OF THE PHOTOGRAPH?

A YES.

[333] Q AND THE REAR TAILLIGHTS WOULD BE FACING TOWARDS THE DONUT STORE?

A CORRECT.

Q AND MIKE WOULD HAVE BEEN A FEW FEET FROM THE REAR PASSENGER TIRE, SOMEWHERE OFF THE PICTURE, CORRECT?

A YES.

Q AND THE DECEDENT IN THIS CASE, THE VICTIM, WOULD HAVE BEEN CLOSER TO THE DUMPSTER; THAT'S CORRECT?

A THAT'S CORRECT.

Q NOW, MS. NAKAKI ASKED YOU IF BACK IN SEPTEMBER YOU AND MIKE WERE FRIENDS. YOU

HAVE NEVER SEEN HIM IN WHERE HE'S IN CUSTODY, CORRECT?

A THAT IS CORRECT.

Q YOU HADN'T HAD ANY PHONE CONVERSATIONS WITH HIM IN THE LAST YEAR-AND-A-HALF, HAVE YOU?

A NO.

Q YOU HAVEN'T WRITTEN HIM ANY LETTERS OR HE HASN'T WRITTEN YOU ANY LETTERS, CORRECT?

A CORRECT.

Q WHAT ARE YOU TELLING THIS JURY, YOU CAN'T SAY FOR SURE, YOU CAN'T SAY FOR POSITIVE MIKE REALLY SAID SOMETHING, THAT'S THE TRUTH, ISN'T IT?

A YES.

Q THAT'S ALWAYS BEEN THE TRUTH?

A YES.

MR. GUTIERREZ: NO FURTHER QUESTIONS.

THE COURT: MR. BERNSTEIN, YOU WANT TO START?

MR. BERNSTEIN: SURE, YOUR HONOR.

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LODGED
CLERK, U.S. DISTRICT COURT
JUN 12 2000
CENTRAL DISTRICT
OF CALIFORNIA

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF-RESPONDENT,	)	NO. VA035109
VS.	)	
PAUL RAYMOND SOTO, DEFENDANT-APPELLANT.	)	

APPEAL FROM THE SUPERIOR COURT OF
LOS ANGELES COUNTY
HONORABLE PHILIP H. HICKOK, JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: DAN E. LUNGREN
STATE ATTORNEY GENERAL
300 SPRING STREET
NORTH TOWER, SUITE 5001
LOS ANGELES, CALIFORNIA 90013

FOR THE DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 2 OF 3
PAGES 243 THROUGH
513, INCL.

CHRISTIE SCHIZAS, CSR 8790

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT
NO. SO-E HON. PHILIP H. HICKOK, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF-RESPONDENT,	)	NO. VA035109
VS.	)	
PAUL RAYMOND SOTO, DEFENDANT-APPELLANT.	)	

REPORTER'S TRANSCRIPT ON APPEAL
MARCH 10, 11, 1997

APPEARANCES:

FOR THE PEOPLE: GILBERT GARCETTI
DISTRICT ATTORNEY
BY: CAROLINE NAKAKI, DEPUTY
12720 NORWALK BOULEVARD
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FOR THE DEFENDANT: PAUL R. SOTO
BARRY O. BERNSTEIN
ATTORNEY AT LAW
1901 AVENUE OF THE STARS
SUITE 1240
CENTURY CITY, CALIFORNIA 90067

CHRISTIE SCHIZAS, CSR #8790

[484]

* * * *

MS. NAKAKI: THE PEOPLE CALL DETECTIVE COMSTOCK.

THE CLERK: DO YOU SOLEMNLY SWEAR THAT THE TESTIMONY YOU ARE ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

THE WITNESS: I DO.

THE WITNESS: I DO.

CHERYL COMSTOCK,

PRODUCED AS A WITNESS BY AND ON BEHALF OF THE PEOPLE, HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

THE WITNESS: I DO.

THE CLERK: PLEASE TAKE A SEAT IN THE WITNESS STAND. STATE YOUR NAME AND SPELL IT FOR THE RECORD.

THE WITNESS: CHERYL COMSTOCK, C-H-E-R-Y-L, C-O-M-S-T-O-C-K.

[485]

+DIRECT EXAMINATION

BY MS. NAKAKI:

Q WHAT IS YOUR OCCUPATION:

A DEPUTY SHERIFF FOR THE COUNTY OF LOS ANGELES. I'M CURRENTLY ASSIGNED TO THE HOMICIDE BUREAU.

Q AND BEGINNING ON SEPTEMBER 23, 1995, WERE YOU INVOLVED IN THE INVESTIGATION OF THE DEATH OF FRANCISCO CASTANEDA?

A YES, I WAS.

Q AND AS PART OF YOUR DUTIES, DID YOU ACTUALLY GO OUT TO THE LOCATION WHERE THIS OCCURED?

A YES, I DID.

MS. NAKAKI: I'M APPROACHING THE WITNESS WITH PEOPLE'S 7, WHICH WAS A PHOTOGRAPH OF WHAT APPEARS TO BE THE TOP PORTION OF A SHIRT.

Q DO YOU RECOGNIZE THAT, DETECTIVE COMSTOCK?

A YES, I DO.

Q HOW DO YOU RECOGNIZE IT?

A IT WAS OBTAINED AT THE SCENE. I SAW IT AT THE LOCATION.

MS. NAKAKI: I'M SHOWING THE WITNESS PEOPLE'S 4, WHICH IS THE PHOTOGRAPH OF A WHITE TRUCK NEXT TO A TRASH BIN.

Q DO YOU SEE CLOTHING IN THE PHOTOGRAPH THAT HAS BEEN MARKED PEOPLE'S 4?

A YES.

Q AND THAT IS -- APPEARS TO BE TO THE LEFT SIDE [486] OR LEFT FRONT SIDE OF THE TRUCK; IS THAT CORRECT?

A YES.

Q AND THE PHOTOGRAPH, PEOPLE'S 7, WHICH APPEARS TO BE THE TOP PORTION OF A SHIRT, IS THAT THE SAME CLOTHING THAT YOU PHOTOGRAPHED SHOWN IN PEOPLE'S 4 -- IN PEOPLE'S 7? WHAT'S SHOWING IN PEOPLE'S 4?

A YES.

Q ALSO, AS PART OF YOUR INVESTIGATION RECORDING THE DEATH OF MR. CASTANEDA, DID YOU INTERVIEW A MICHAEL ALVARADO?

A YES, I DID.

Q WAS THAT ON OCTOBER 24, 1995?

A YES.

Q THIS WAS 12:30 IN THE AFTERNOON AT THE PICO RIVERA STATION; IS THAT CORRECT?

A YES.

Q AND DURING THAT INTERVIEW, MR. ALVARADO DID IN FACT ANSWER SOME OF YOUR QUESTIONS; IS THAT RIGHT?

A YES.

MS. NAKAKI: YOUR HONOR, I HAVE AN AUDIO TAPE WHICH I AM GOING TO BE MARKING PEOPLE'S 8, AND ON THE TAPE ITSELF IT STATES ALVARADO'S STATEMENT.

THE COURT: VERY WELL.

Q BY MS. NAKAKI: DETECTIVE COMSTOCK, OVER THE NOON HOUR DID YOU SEE THIS TAPE THAT'S MARKED PEOPLE'S 8, ALVARADO'S STATEMENT?

A YES.

Q AND, IF YOU KNOW, WERE THESE EXCERPTS OF [487] MR. ALVARADO'S INTERVIEW WITH YOU?

A YES.

MS. NAKAKI: YOUR HONOR, IF I MAY JUST HAVE THE WITNESS PLACE THE CASSETTE INTO THE RECORDER. WHAT I'M GOING TO DO IS PLAY THE FIRST PORTION OF THE TAPE AND SEE IF THE WITNESS RECOGNIZES THE VOICES ON THE TAPE AND STOP IT.

(WHEREUPON AN AUDIO TAPE MARKED ALVARADO'S STATEMENT, PEOPLE'S 8, WAS PLAYED.)

Q BY MS. NAKAKI: DETECTIVE COMSTOCK, DO YOU RECOGNIZE THE TWO VOICES ON THAT TAPE?

A YES.

Q THERE'S A FEMALE VOICE. WHOSE VOICE IS THAT?

A MINE.

Q THERE'S A SECOND VOICE ON THAT TAPE, A MALE VOICE. WHOSE VOICE IS THAT?

A MICHAEL ALVARADO.

Q IS MICHAEL ALVARADO IN THE COURTROOM TODAY?

A YES, HE IS.

Q CAN YOU POINT HIM OUT AND DESCRIBE WHAT HE'S WEARING IN COURT TODAY?

A THE WHITE DRESS SHIRT WITH THE TIE AT THE END OF COUNSEL TABLE.

THE COURT: INDICATING, FOR THE RECORD, THE DEFENDANT MICHAEL ALVARADO.

Q BY MS. NAKAKI: THE PERSON YOU IDENTIFIED IN [488] COURT TODAY IS THE INDIVIDUAL THAT YOU INTERVIEWED ON OCTOBER 24, 1995?

A YES.

Q AND THE PORTION OF THE TAPE THAT YOU HEARD IS THE INTERVIEW THAT YOU CONDUCTED ON OCTOBER 24, 1995, WITH MR. ALVARADO?

A YES.

Q PORTIONS OF IT?

A YES.

MS. NAKAKI: YOUR HONOR, IF I MAY, I'LL GO AHEAD AND PLAY THE TAPE.

THE COURT: ALL RIGHT.

RELIEVE THE REPORTER OF HER RESPONSIBILITIES?

MR. GUTIERREZ: YES. I WOULD STIPULATE.

MR. BERNSTEIN: I DO.

(WHEREUPON AN AUDIO TAPE MARKED ALVARADO'S STATEMENT, PEOPLE'S 8, WAS PLAYED.)

Q BY MS. NAKAKI: WITH REGARD TO THE TAPE THAT IS MARKED AS PEOPLE'S 8, IS THAT A FAIR RECORDATION OF THE INTERVIEW YOU HAD WITH MR. ALVARADO ON OCTOBER 24, 1995?

A YES.

* * * *

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LODGED
CLERK, U.S. DISTRICT COURT
JUN 12 2000
CENTRAL DISTRICT
OF CALIFORNIA

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF-RESPONDENT,	)	NO. VA035109
VS.	)	
PAUL RAYMOND SOTO, DEFENDANT-APPELLANT.	)	

APPEAL FROM THE SUPERIOR COURT OF
LOS ANGELES COUNTY
HONORABLE PHILIP H. HICKOK, JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: DAN E. LUNGREN
STATE ATTORNEY GENERAL
300 SPRING STREET
NORTH TOWER, SUITE 5001
LOS ANGELES, CALIFORNIA 90013

FOR THE DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 3 OF 3
PAGES 514 THROUGH
836, INCL.

CHRISTIE SCHIZAS, CSR 8790

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT
NO. SO-E HON. PHILIP H. HICKOK, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF-RESPONDENT,	)	NO. VA035109
VS.	)	
PAUL RAYMOND SOTO, DEFENDANT-APPELLANT.	)	

REPORTER'S TRANSCRIPT ON APPEAL
MARCH 12, 13, 14, 17, 1997
MAY 16, 1997
JULY 18, 1997

APPEARANCES:

FOR THE PEOPLE: GILBERT GARCETTI,
DISTRICT ATTORNEY
BY: CAROLINE NAKAKI, DEPUTY
12720 NORWALK BOULEVARD
NORWALK, CALIFORNIA 90650

FOR THE DEFENDANT: PAUL R. SOTO
BARRY O. BERNSTEIN
ATTORNEY AT LAW
1901 AVENUE OF THE STARS
SUITE 1240
CENTURY CITY, CALIFORNIA 90067

CHRISTIE SCHIZAS, CSR #8790

[547] THE COURT: BACK ON THE RECORD.

MR. GUTIERREZ.

MR. GUTIERREZ: YOUR HONOR, I WOULD LIKE TO PROCEED AT THIS TIME IF I MAY. I WOULD LIKE TO CALL MR. MICHAEL ALVARADO TO THE STAND.

THE CLERK: DO YOU SOLEMNLY SWEAR THAT THE TESTIMONY YOU ARE ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

THE WITNESS: I DO.

MICHAEL ALVARADO,

PRODUCED AS A WITNESS BY AND ON BEHALF OF THE DEFENDANT ALVARADO, HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE TAKE A SEAT IN THE WITNESS STAND. SAY YOUR NAME AND SPELL IT, PLEASE.

THE WITNESS: MICHAEL ALVARADO, M-I-C-H-A-E-L, A-L-V-A-R-A-D-O.

THE COURT: GO AHEAD.

MR. GUTIERREZ: THANK YOU, YOUR HONOR. AND I WOULD LIKE TO REMARK AS EXHIBIT "E" WHAT APPEARS TO BE A PHOTOGRAPH.

THE COURT: VERY WELL.

(WHEREUPON, A PHOTOGRAPH OF MICHAEL ALVARADO, DEFENSE EXHIBIT E, WAS MARKED FOR IDENTIFICATION.)

[548]

+DIRECT EXAMINATION

BY MR. GUTIERREZ:

Q GOOD MORNING, MR. ALVARADO.

A GOOD MORNING.

Q HAVE YOU EVER BEEN ON A WITNESS STAND BEFORE?

A NO, I HAVEN'T.

Q I WOULD LIKE YOU TO TRY TO SPEAK UP SO THAT THE JURY CAN HEAR YOU, AND PUT THAT MICROPHONE IN FRONT OF YOU.

A OKAY.

Q MR. ALVARADO, HOW OLD ARE YOU?

A I'M 18.

Q YOU HAVE A VERY LIGHT VOICE. JUST A LITTLE MORE. MAYBE A LITTLE CLOSER.

HOW OLD ARE YOU, SIR?

A 18.

Q WHAT IS YOUR DATE OF BIRTH?

A 3-13-78.

Q BACK IN SEPTEMBER OF '95, HOW OLD WERE YOU?

A 17.

Q AND BACK IN SEPTEMBER OF '95, WHERE WERE YOU LIVING?

A WAS LIVING IN THE CITY OF PICO RIVERA, RIGHT OFF TELEGRAPH ROAD.

Q WHAT WAS THE ADDRESS?

A 9853 WYLAND STREET.

Q YOU SAID IT'S RIGHT OFF OF TELEGRAPH ROAD?

[549] A YES.

Q IS THERE A MALL ON TELEGRAPH ROAD?

A YES.

Q IS THAT THE MALL THAT WE'VE BEEN TALKING ABOUT THE LAST FEW DAYS?

A YES. THE SANTA FE SPRINGS PROMENADE MALL.

Q DO YOU KNOW HOW MANY MILES, WHAT DISTANCE IT IS FROM YOUR HOUSE?

A MAYBE A HALF A MILE.

Q IS IT WALKING DISTANCE?

A YES.

Q DID YOU EVER WALK THAT DISTANCE BEFORE?

A YES. I WOULD WALK THERE OFTEN.

Q HOW LONG HAVE YOU BEEN GOING TO THAT MALL?

A MOSTLY ALL MY LIFE REALLY, SHOPPING THERE WITH FAMILY AND EVERYBODY.

Q BACK IN SEPTEMBER OF '95, DID YOU FREQUENT THE MALL ALSO?

A YES, I DID.

Q HOW OFTEN WOULD YOU GO TO THE MALL IN SEPTEMBER OF '95?

A JUST ABOUT EVERY DAY, MAYBE.

Q MICHAEL, YOU ARE CHARGED WITH MURDER. YOU ARE CHARGED WITH THE MURDER OF

FRANCISCO CASTANEDA. DID YOU KILL MR. FRANCISCO CASTANEDA?

A NO, I DID NOT.

MS. NAKAKI: OBJECTION. THAT'S ASKING THIS WITNESS FOR A LEGAL CONCLUSION. MOTION TO STRIKE.

[550] THE COURT: OVERRULED.

Q BY MR. GUTIERREZ: DID YOU EVER INTEND FOR MR. FRANCISCO CASTANEDA TO BE KILLED?

A NO, I DID NOT.

Q DID YOU EVER ROB MR. FRANCISCO CASTANEDA?

A NO, I DID NOT. I WOULD NEVER DO ANYTHING LIKE THAT.

Q DID YOU EVER ASSAULT MR. FRANCISCO CASTANEDA?

A NO, I DID NOT.

Q DID YOU EVER TALK TO MR. FRANCISCO CASTANEDA?

A NO.

Q DID YOU EVER TOUCH HIS PERSON?

A NO.

Q DID YOU EVER TOUCH HIS CAR?

A NO, I DID NOT.

Q DID YOU EVER TOUCH THE CONTENTS OF HIS CAR?

A NO, I DID NOT.

Q DID YOU HAVE A GUN THERE WHILE YOU WERE AT THE MALL?

A NO, I DID NOT.

Q DID YOU HAVE BULLETS WHILE YOU WERE AT THE MALL?

A NO.

Q DID YOU EVER PLAN THAT MR. CASTANEDA SHOULD BE KILLED?

A NO.

Q DID YOU EVER PLAN THAT MR. CASTANEDA

--

MS. NAKAKI: YOUR HONOR, OBJECT TO THIS LINE OF [551] QUESTIONING. IT'S ALL LEADING.

THE COURT: SUSTAINED.

Q BY MR. GUTIERREZ: ON THE NIGHT THAT MR. CASTANEDA DIED WERE YOU EVER ON THE DRIVER'S SIDE OF HIS VEHICLE?

A NO, I WAS NOT.

Q DID YOU EVER TALK TO HIM?

A NO, I DID NOT.

Q DID YOU EVER MAKE ANY REQUEST OF MR.

--

MS. NAKAKI: YOUR HONOR, SAME OBJECTION. THIS IS LEADING.

THE COURT: IT'S LEADING.

Q BY MR. GUTIERREZ: MR. ALVARADO, LET'S GO BACK, THEN, AND START FROM THE BEGINNING.

ON SEPTEMBER 23, PRIOR TO THAT DAY DID YOU KNOW PAUL SOTO?

A NO, I DID NOT.

Q HAD YOU, PRIOR TO SEPTEMBER 23, EVER SPENT TIME OR SOCIALIZED WITH PAUL SOTO?

A NO.

Q WHEN WAS THE FIRST TIME THAT YOU ACTUALLY MET PAUL SOTO?

A ON THE DAY OF THIS INCIDENT.

Q ON SEPTEMBER 23?

A YES.

Q NOW, YOU WERE TAKEN -- YOU WENT TO A POLICE STATION IN OCTOBER?

[552] A YES.

Q HOW DID YOU GET THERE?

A EXCUSE ME?

Q HOW DID YOU GET THERE?

A TAKEN TO THE POLICE STATION BY MY FATHER.

Q AND WHEN YOU FATHER TOOK YOU THERE, DID YOU GO IN THERE?

A YES.

Q WALK IN?

A YES.

Q WHERE DID YOU GO ONCE YOU GOT TO THE POLICE STATION?

A I WAS JUST GOING BY MS. COMSTOCK TO A BACK INTERVIEW ROOM, I GUESS.

Q AND WHAT WERE THE CONTENTS OF THE INTERVIEW ROOM? WAS THERE A TABLE? A CHAIR?

A JUST A TABLE AND TWO CHAIRS.

Q WAS THERE A DOOR TO THE INTERVIEW ROOM?

A YES.

Q WAS IT OPEN OR CLOSED?

A I CAN'T REMEMBER.

Q NOW, HAD YOU EVER BEEN IN A POLICE INTERVIEW ROOM BEFORE?

A NO, I HADN'T.

Q AND YESTERDAY THERE WAS REFERENCE TO PEOPLE'S EXHIBIT 9.

MR. GUTIERREZ: MAY I APPROACH, YOUR HONOR?

THE COURT: YES, YOU MAY.

[553] Q BY MR. GUTIERREZ: I WOULD LIKE YOU TO LOOK AT PEOPLE'S EXHIBIT 9. IT SAYS, "THE EXPLANATION OF ADMONITION AND USE OF WAIVER OF YOUR RIGHTS."

DID YOU EVER SIGN A CARD LIKE THAT?

MS. NAKAKI: OBJECTION, YOUR HONOR, REGARDING THAT PARTICULAR EXHIBIT AND THIS LINE OF QUESTIONING.

MR. GUTIERREZ: I THOUGHT I MADE THE RECORD THIS MORNING WITH PEOPLE VERSUS JIMENEZ AND KENTUCKY VERSUS --

THE COURT: EXHIBIT 9 IS RELATIVE TO MR. SOTO, RIGHT?

MR. GUTIERREZ: YES, YOUR HONOR. JUST ASKING, DID HE -- WAS HE EVER SHOWN ANYTHING OF THIS SORT.

THE COURT: HE MAY ANSWER THAT.

THE WITNESS: NO, I WAS NOT.

Q BY MR. GUTIERREZ: HOW LONG WAS THE INTERVIEW ABOUT?

A IT SEEMED MAYBE TWO HOURS OR SO, TWO AND A HALF HOURS.

Q WERE YOU A LITTLE NERVOUS?

A YES, I WAS.

Q YOU SAY YOU HAD NEVER BEEN IN AN INTERVIEW ROOM BEFORE. DID YOU EVER STOP THE

INTERVIEW AND GO TALK TO YOUR PARENTS OR GO GET A DRINK OF WATER OR GO TO THE BATHROOM?

A NO. I NEVER LEFT THE INTERVIEW.

Q YOU REMAINED THERE?

A YES.

Q AFTER THIS INTERVIEW WAS COMPLETED, WHERE DID YOU GO?

[554] A I WENT BACK HOME TO MY HOUSE WITH MY FATHER.

Q AND LATER ON THAT YEAR, WERE YOU ASKED TO GO BACK TO THE POLICE STATION?

A YES. I BELIEVE MY PARENTS RECEIVED A CALL, AND THEY HAD ASKED ME TO TURN MYSELF IN OR THERE WOULD BE WARRANTS OUT FOR ME.

Q WHEN YOU RECEIVED A CALL TO TURN YOURSELF IN, WHAT DID YOU DO?

A THE NEXT MORNING I TURNED MYSELF IN.

Q YOU WENT BACK TO THE POLICE STATION?

A YES.

Q YOU WERE ARRESTED?

A YES.

Q CHARGED WITH MURDER?

A YES.

Q MICHAEL -- EXCUSE ME -- MR. ALVARADO, THIS MALL THAT YOU HAD BEEN FREQUENTING FOR A GOOD PART OF YOUR LIFE, CAN YOU DESCRIBE THE MALL? WHAT KIND OF STORES ARE THERE?

A THERE'S FAST FOOD STORES THERE, CLOTHING STORES, SHOE STORES. I BELIEVE THERE'S ELECTRIC COMPANY STORE THERE, CLEANERS. THERE ARE A LOT OF STORES THERE, DIFFERENT STORES.

Q WHAT ABOUT A BARBER?

A YES. THERE'S A BARBER SHOP AROUND THE BACK.

Q DID YOU EVER USE ANY OF THE STORES IN THAT PLACE?

A JUST ABOUT EVERY ONE OF THEM.

[555] Q BARBER SHOP?

A BARBER SHOP, THE VIDEO STORE, CLEANERS, AND THE RESTAURANTS THERE.

Q AND, MR. ALVARADO, THERE WAS A REFERENCE IN YOUR STATEMENT TO TOWN CENTER. WHAT IS THE TOWN CENTER?

A TOWN CENTER HALL IS A -- LIKE A PLACE FOR -- REALLY FOR YOUTH. AND THEY GO, AND SOMETIMES THEY -- IN SOME CASES THEY TEACH YOU TO BE A RECREATION LEADER, OR YOU CAN GO THERE FOR SCHOOL CREDIT. THERE ARE DIFFERENT REASONS. SOME PEOPLE JUST GO, AND IT'S A PLACE TO HANG OUT INSTEAD OF BEING OUT ON THE STREETS.

Q HOW FAR IS THE TOWN CENTER FROM THIS MALL ON TELEGRAPH ROAD?

A MAYBE A BLOCK, BLOCK AND A HALF.

Q PRIOR TO SEPTEMBER 23RD OF '95, HOW LONG HAVE YOU BEEN FREQUENTING THE TOWN CENTER ABOUT A BLOCK, BLOCK AND A HALF FROM THE MALL?

A I REALLY CAN'T REMEMBER HOW LONG. I KNOW IT WAS MAYBE MORE THAN HALF A YEAR OR SO.

Q DO YOU KNOW WHERE SANTA FE HIGH SCHOOL IS?

A YES, I DO.

Q WHERE IS SANTA FE HIGH SCHOOL AT?

A IT'S DOWN THE STREET, ON ORR AND DAY ROAD, FROM THE PROMENADE MALL.

Q ABOUT HOW FAR IS SANTA FE HIGH SCHOOL FROM THE MALL?

A MAYBE TWO BLOCKS OR SO.

Q WALKING DISTANCE?

[556] A YES.

Q PRIOR TO SEPTEMBER 23 OF '95, DID YOU EVER ATTEND SANTA FE?

A YES, I DID. I ATTENDED SANTA FE FOR, I BELIEVE, TWO YEARS.

Q AND WHILE YOU WERE AT SANTA FE, DID YOU EVER FREQUENT THE MALL WHILE YOU WERE GOING TO SCHOOL THERE?

A YES. JUST ABOUT EVERY DAY THAT -- WE WOULD HAVE OPEN CAFÉ AND GO FOR LUNCH, THINGS LIKE THAT.

Q YOU INDICATED YOU KNOW ALL THE STORES AT THE MALL, THAT YOU'VE PATRONIZED THE STORES AT THE MALL. DO YOU KNOW SOME OF THE PEOPLE THAT WORK AT THE MALL?

A YES, I DO.

Q DO YOU KNOW IF THERE'S A POLICE STATION OR A SUBSTATION THERE AT THE MALL?

A YES. THERE'S A SERVICE STATION AT THE CORNER OF THE MALL BY THE KENTUCKY FRIED CHICKEN.

Q AND WHAT DOES THE SERVICE STATION CONTAIN?

A I DON'T KNOW WHAT IT CONTAINS.

Q DID YOU EVER SEE POLICE CARS THERE?

A YES.

Q WHAT ABOUT ON SEPTEMBER 23? THAT NIGHT DID YOU EVER SEE A POLICE STATION CAR THERE?

A YES, I DID. THERE WAS, I BELIEVE, A BLACK-AND-WHITE CAR IN THE MIDDLE OF THE DRIVEWAY WITH THE MOTOR RUNNING AND LIGHTS ON, AND THERE WERE OTHER -- I'M NOT SURE IF THEY WERE POLICE OR THE SERVICEMEN THERE, BUT THEY

SEEMED TO BE TALKING TO THE OFFICERS IN THE CAR.

[557] Q AND THIS POLICE STATION OR SUBSTATION THAT'S AT THE MALL, YOU SAID IT'S BY THE KENTUCKY FRIED CHICKEN PLACE. MANY OF US ARE NOT AS FAMILIAR WITH THE MALL AS YOU ARE. WHERE IS KENTUCKY FRIED CHICKEN LOCATED ON THIS STRIP MALL?

A IT'S TOWARDS THE END OF THE MALL GOING TOWARDS THE TOWN CENTER. THEY ARE BOTH ON THE CORNER OF THE MALL ON THE CORNER OF, I BELIEVE, TELEGRAPH AND JERSEY ROAD.

Q DO YOU KNOW YOUR DIRECTIONS? SORT OF WEST/EAST, NORTH/SOUTH?

A A LITTLE BIT.

Q FOR EXAMPLE, THE 605 FREEWAY, DOES THAT RUN WEST/EAST, NORTH/SOUTH?

A I BELIEVE NORTH/SOUTH.

Q AND TELEGRAPH ROAD, DOES THAT RUN NORTH/SOUTH, WEST/EAST?

A WEST/EAST.

Q SO WHEN YOU SAY THAT THE SUBSTATION IS BY THE KENTUCKY FRIED CHICKEN RESTAURANT ON THE OTHER SIDE OF THE MALL, WOULD THAT BE ON THE WEST SIDE OF THE MALL OR THE EAST SIDE OF THE MALL?

A I BELIEVE IT WOULD BE ON THE EAST SIDE OF THE MALL.

Q WHERE WOULD THE TOWN CENTER BE? EAST OF THE MALL?

A EAST OF THE MALL, YES.

Q WHAT ABOUT SANTA FE HIGH SCHOOL? WHERE WOULD THAT BE?

[558] A I BELIEVE THAT WOULD BE SOUTH OF THE MALL.

Q AND YOUR HOME, IT WAS MAYBE A HALF A MILE FROM THE TOWN CENTER. WHERE WOULD THAT BE IN LOCATION TO THE STRIP MALL?

A IT WOULD BE NORTHWEST OF THE MALL, MAYBE.

Q AND MANUEL RIVERA'S HOME, WHERE HE WAS LIVING BACK IN SEPTEMBER OF '95, WHERE WOULD THAT BE IN RELATION TO THE STRIP MALL, I F YOU KNOW?

A SOUTH OF THE MALL. IT WOULD BE BEHIND THE MALL.

Q WHEN YOU SAY "BEHIND THE MALL," WOULD IT BE DIRECTLY BEHIND THE MIDDLE OF THE MALL OR MORE TOWARDS ONE AREA?

A MORE TOWARDS THE EAST END OF THE MALL.

Q MR. ALVARADO, PEOPLE'S EXHIBIT 2 IS A PHOTOGRAPH OF YOU IN A T-SHIRT. YOUR HAIR IS SHORT, KIND OF BALD. WHERE WAS THAT TAKEN?

A I BELIEVE AT THE SHERIFF'S STATION.

Q AND HOW LONG HAD YOU HAD SHORT HAIR OR A BALD HEAD?

A MOST OF MY LIFE I HAVE.

Q WHEN DID YOU START WEARING SHORT HAIR?

A MAYBE FOURTH, FIFTH GRADE. AROUND THERE.

Q PREVIOUSLY MARKED DEFENSE EXHIBIT "E," PREVIOUSLY SHOWN TO COUNSEL --

MR. GUTIERREZ: YOUR HONOR, MAY I APPROACH?

THE COURT: YES.

Q BY MR. GUTIERREZ: THIS PHOTOGRAPH OF YOU, DO [559] YOU KNOW WHAT CALENDAR PERIOD THAT COVERS?

A I BELIEVE '94, '95, I BELIEVE.

Q '94, '95?

A YES.

Q AND YOU ALSO HAD SHORT HAIR BACK THEN?

A YES.

Q WHILE I'M UP HERE, MR. ALVARADO, I WANT YOU TO --

MR. GUTIERREZ: WITH THE COURT AND PLAINTIFF'S PERMISSION, MAY HE APPROACH THE DIAGRAM?

THE COURT: YES.

Q BY MR. GUTIERREZ: MR. ALVARADO, WOULD YOU BE KIND ENOUGH TO STEP DOWN. I WANT YOU

TO LOOK AT WHAT HAS BEEN MARKED AS PEOPLE'S 1.

JUST SO THAT YOU CAN GET YOUR BEARINGS, HAVE YOU SEEN THIS PHOTOGRAPH BEFORE?

A YES, I HAVE.

Q TAKE A LOOK AT IT. WHAT DOES THAT DEPICT?

A LOOKS LIKE AN AERIAL PHOTOGRAPH OF THE MALL.

Q YOU ARE GOING TO HAVE TO SPEAK UP.

WHAT DOES IT LOOK LIKE?

A THE AERIAL PHOTOGRAPH OF THE PROMENADE MALL.

Q AND PHOTOGRAPH PEOPLE'S 1-B, WHAT AREA DOES THAT DEPICT, IF YOU KNOW?

A LOOKS LIKE THE EAST END OF THE MALL AND SOME OF THE HOUSES BEHIND IT.

Q AND PHOTOGRAPH "A"?

A THE MIDDLE OF THE MALL WHERE THE DUMPSTER IS [560] AT.

Q YOU HAVE TO SPEAK UP.

ONCE AGAIN?

A THE MIDDLE OF THE MALL WHERE THE DUMPSTER IS.

Q PHOTOGRAPH "AA," IDENTIFIED BY MR. BERNSTEIN'S EXAMINATION?

A THAT'S THE FRONT OF JACK'S MARKET, THE TELEPHONE AREA.

Q HAVE YOU EVER SHOPPED AT JACK'S MARKET?

A YES, I HAVE.

Q ARE THERE TELEPHONES IN FRONT OF JACK'S MARKET?

A YES, THERE ARE.

Q WHEN YOU LOOK AT PEOPLE'S 1-B, WITH THIS POINTER COULD YOU SHOW THE JURY

APPROXIMATELY MORE OR LESS WHERE IT WAS THAT MANUEL LIVED BACK IN SEPTEMBER OF 1995?

A I BELIEVE RIGHT HERE (INDICATING).

Q AND IS THERE A CIRCLE AROUND THAT?

A YES. ORANGE CIRCLE.

Q DOES MANUEL RIVERA'S HOUSE HAVE A BACK GATE?

MS. NAKAKI: YOUR HONOR, FOR THE RECORD, THE WITNESS POINTED TO -- POINTED AT PEOPLE'S 1-B, THE UPPER RIGHT PHOTOGRAPH.

THE COURT: RIGHT.

MR. GUTIERREZ: FOR THE RECORD, YES. THANK YOU, COUNSEL.

Q SIR, WHERE IS THE FRONT OF MANUEL RIVERA'S HOUSE ON PHOTOGRAPH PEOPLE'S 1-B?

[561] A IT'S DOWN IN THE LOWER LEFT CORNER.

Q AND IS THERE A REAR GATE TO MANUEL RIVERA'S HOUSE?

A YES, THERE IS.

Q WHERE IS THAT LOCATED, SIR?

A IT WOULD BE THE BACK OF MANUEL'S HOUSE WHERE THEIR ALLEY RUNS.

MR. GUTIERREZ: FOR THE RECORD, MY QUESTIONS WILL ALL BE PERTAINING TO PEOPLE'S 1-B, RATHER THAN JUST REIDENTIFYING IT.

Q AND THE GATE, WHERE DOES MANUEL RIVERA'S GATE LEAD TO, THE REAR GATE?

A IT LEADS TO -- WHICH I BELIEVE RUNS TO THE WEST -- AN ALLEY, AND IT LEADS TO THE BACK ENTRANCE TO THE MALL.

Q DO YOU SEE THE ENTRANCE TO THE MALL IN THAT PHOTOGRAPH?

A YES, I DO.

Q WHERE WAS THAT? MAYBE YOU CAN POINTS IT OUT TO THE LADIES AND GENTLEMEN OF THE JURY.

BEST AVAILABLE COPY

A THE ENTRANCE OF THE MALL GOES RIGHT IN HERE (INDICATING).

MR. GUTIERREZ: FOR THE RECORD, YOUR HONOR, IT APPEARS THAT HE IS POINTING TO WHAT APPEARS TO BE SORT OF A WIDE STREET GOING IN A NORTHERLY DIRECTION JUST EAST OF WHAT HAS BEEN IDENTIFIED AS MANUEL RIVERA'S HOME.

Q HOW FAR IS MANUEL RIVERA'S REAR GATE TO THE ENTRANCE OF THE MALL, IF YOU KNOW? AND IF YOU WANT, YOU CAN [562] POINT TO AN OBJECT IN THIS COURTROOM SO WE CAN VISUALIZE IT.

A MAYBE JUST A LITTLE OUTSIDE OF THE COURTROOM.

Q WHEN YOU ENTER THE MALL, WHERE IS THE POLICE SUBSTATION?

A IT WOULD BE JUST TO YOUR RIGHT.

Q AND DO YOU SEE THAT AREA IN THE PHOTOGRAPH?

A YES, I DO.

Q TELL THE LADIES AND GENTLEMEN OF THE JURY APPROXIMATELY WHERE THE POLICE SUBSTATION IS IN RELATION TO THE ENTRANCE OF THE MALL BY MANUEL RIVERA'S HOME?

A BY THE ENTRANCE OF THE MALL. IT'S JUST TO YOUR RIGHT. AS YOU ENTER THE MALL, THE SUBSTATION IS RIGHT HERE, AND THE ENTRANCE OF THE MALL IS RIGHT HERE (INDICATING).

MR. GUTIERREZ: MAY THE RECORD REFLECT HE'S POINTED TO WHAT APPEARS TO BE A BROWNISH ROOF JUST RIGHT OF A BUILDING WITH RED PAINT AROUND IT, SOMETHING TO THAT EFFECT?

THE COURT: VERY WELL.

Q BY MR. GUTIERREZ: AND HOW FAR IS THE SUBSTATION FROM THE ENTRANCE TO THE MALL? AND I KNOW YOU PROBABLY NEVER MEASURED IT. IF YOU WANT, WE CAN TRY TO VISUALIZE THAT DISTANCE IF IT HELPS YOU.

A MAYBE JUST OUTSIDE THE COURTROOM FROM THE ENTRANCE OF THE MALL TO THE SUBSTATION.

Q AS YOU ENTER THE MALL, FROM MANUEL'S HOUSE CAN YOU ACTUALLY SEE THE SUBSTATION?

A YES, YOU CAN. YES, YOU CAN. VERY GOOD.

Q IT'S CLEAR?

[563] A VERY CLEARLY, YES.

Q ANY OBSTRUCTIONS?

A NO.

Q AND YOU INDICATED THAT THAT NIGHT YOU SAW A POLICE CAR. DO YOU SEE THE AREA WHERE THE BLACK-AND-WHITE WAS ON SEPTEMBER 23?

A YES. I DO.

Q WHERE IS THAT AREA?

A IT'S JUST IN FRONT OF THE POLICE SUBSTATION SERVICE CENTER.

MR. GUTIERREZ: YOUR HONOR, APPEARS TO BE DIRECTLY BELOW WHAT HE HAS IDENTIFIED AS THE POLICE SUBSTATION, WHICH BASICALLY IS THE BUILDING OR PART OF THE BUILDING THAT IS IN THE FARTHEST EAST SIDE OF THE MALL, BASICALLY THE NORTHEAST CORNER OF TELEGRAPH ROAD, THAT BUILDING. I DON'T KNOW IF THAT'S CLEAR OR NOT.

Q AND THE JACK'S MARKET THAT HAS BEEN REFERRED TO OVER THE LAST SEVERAL DAYS, SIR, DO YOU SEE THAT AREA IN THE AERIAL PHOTOGRAPH?

A YES, I DO.

Q POINT THAT OUT TO THE LADIES AND GENTLEMEN OF THE JURY.

A IT WOULD BE THE BIG ROOF OVER HERE (INDICATING).

MR. GUTIERREZ: POINTING TO WHAT APPEARS TO BE ALMOST THE CENTER OF THE PHOTOGRAPH, TO THE TOP LEFT CORNER. IT'S A LARGE RECTANGULAR GRAY ROOF, PERHAPS THE -- IT'S ALMOST CONTINUOUS BUILDINGS, BUT I WOULD SAY IT WOULD BE THE FOURTH [564] BUILDING FROM THE LEFT OF THE PHOTOGRAPH THAT IS FROM EAST TO WEST.

THE COURT: SO INDICATING.

Q BY MR. GUTIERREZ: AND THE -- YOSHIMA?

A YOSHINOYA.

Q DO YOU SEE THAT RESTAURANT THERE ON THE PHOTOGRAPH?

A YES, I DO.

Q WHERE IS THAT?

A THAT IS ON THE TOP LEFT CORNER, THE SMALL ROOF.

Q DIRECTLY IN FRONT OF YOSHINOYA, OR DIRECTLY SOUTH OF YOSHINOYA, WHAT IS THERE, IF YOU KNOW?

A THERE'S SOME PARKING STRUCTURES AND A DUMPSTER WITH PLANTERS AROUND IT.

Q THE DUMPSTER THAT IS DIRECTLY IN FRONT OF YOSHINOYA, DO YOU SEE THAT IN ANY OF THE PHOTOGRAPHS HERE?

A YES. IN THREE OF THE PHOTOGRAPHS. RIGHT HERE, RIGHT HERE, AND RIGHT HERE (INDICATING).

MR. GUTIERREZ: FOR THE RECORD, HE'S REFLECTED TO A DUMPSTER IN PEOPLE'S 1-C, DEFENSE EXHIBIT "A," AND DEFENSE EXHIBIT -- I BELIEVE DOUBLE "D."

THE COURT: VERY WELL.

Q BY MR. GUTIERREZ: ON SEPTEMBER 23 OF 1995 -- LET'S GO TO THE DAY PRIOR TO THE EARLY MORNING OF SEPTEMBER 23. SEPTEMBER 22, 1995, WHAT WERE YOU DOING THAT AFTERNOON?

A ON SEPTEMBER 22?

Q YES.

[565] A I CAN'T REMEMBER.

Q DID YOU HAVE OCCASION TO GO TO SOMEBODY'S HOUSE ON THE 22?

A YES, I DID.

Q AND WHOSE HOUSE DID YOU GO TO?

A I BELIEVE MR. RIVERA'S.

Q AND ABOUT WHAT TIME WAS IT THAT YOU ARRIVED AT MANUEL RIVERA'S HOUSE?

A I CAN'T REMEMBER THE EXACT TIME, BUT MAYBE EARLY AFTERNOON.

Q WHEN YOU SAY "EARLY AFTERNOON" --

A MAYBE 3:00 OR 4:00.

Q HOW IS IT THAT YOU ARRIVED TO MANUEL RIVERA'S HOUSE IN THE EARLY AFTERNOON?

A I BELIEVE AT FIRST I WALKED FROM MY HOUSE.

Q AND WHEN YOU WALKED TO MANUEL RIVERA'S HOUSE, WERE YOU ALONE, OR WERE YOU ACCOMPANIED BY SOMEONE?

A AT FIRST, I BELIEVE I WALKED ALONE.

Q AND WHO DID MANUEL RIVERA LIVE WITH BACK THEN?

A I BELIEVE HIS MOTHER, STEPFATHER, AND TWO BROTHERS AND A LITTLE SISTER.

Q AND THE TWO BROTHERS, WERE THEY OLDER THAN HIM.

A NO. THEY WERE HIS LITTLE BROTHERS.

Q THEY WERE YOUNG?

A YES.

Q WHAT ABOUT THE LITTLE GIRL THAT YOU REFERRED TO? WAS SHE YOUNG?

[566] A YES. SHE WAS YOUNGER THAN MANUEL.

Q PRIOR TO SEPTEMBER 23 OF '95, HAD YOU EVER SPENT THE NIGHT AT MANUELS' HOUSE?

A YES, I HAD. MANY TIMES.

Q PRIOR TO SEPTEMBER 23 OF 1995, HAD HE EVER SPENT THE NIGHT AT YOUR HOUSE?

A YES, HE HAS.

Q WHO WERE YOU LIVING WITH BACK ON SEPTEMBER 23, 1995?

A I WAS LIVING WITH MY PARENTS AND MY TWO YOUNGER SISTERS AND MY OLDER SISTER.

Q ONCE YOU ARRIVED AT MANUEL'S HOME THE EARLY AFTERNOON OF SEPTEMBER 22, 1995, ONCE YOU WALKED THERE, WHAT HAPPENED NEXT?

A I BELIEVE WE WENT IN HIS HOUSE FOR, I BELIEVE, A FEW MINUTES, AND THEN WE WALKED TO THE TOWN CENTER HALL.

Q AND WHEN YOU WALKED TO THE TOWN CENTER HALL WITH MANUEL, DID ANYONE ELSE JOIN YOU?

A I BELIEVE WE MET UP WITH JASON ALONG THE WAY ON THE WALK OVER THERE.

Q AND ANYONE ELSE JOIN YOU AS YOU WALKED OVER?

A NO. I CAN'T REMEMBER ANYBODY ELSE JOINING.

Q ONCE YOU ARRIVED AT THE TOWN CENTER THE EARLY AFTERNOON OF SEPTEMBER 22, WHAT DID YOU DO THERE?

A WE WENT IN. AND YOU SIGN IN AS YOU GO IN, AND MARK THE TIME YOU GET THERE. AND WE

JUST REALLY SEEN WHO ELSE WAS THERE WHO WE KNOW OR WHAT OTHER FRIENDS THAT WERE THERE.

[567] Q HOW LONG DID YOU STAY AT THE TOWN CENTER?

A MAYBE 20, 30 MINUTES OR SO.

Q DID YOU SEE ANY OTHER FRIENDS THAT YOU KNEW BACK THEN?

A YES, I DID.

Q WHO DID YOU SEE?

A I BELIEVE VALERIE WAS THERE AND DESMOND, AND I BELIEVE TONI AND SONJA WERE THERE, ALSO.

Q WAS VALERIE THERE BEFORE YOU GOT THERE OR AFTER?

A I THINK SHE WAS BEFORE I GOT THERE.

Q WHAT ABOUT DESMOND?

A YES. I BELIEVE HE WAS THERE BEFORE US.

Q AND BY "VALERIE" AND "DESMOND," ARE YOU REFERRING TO THE INDIVIDUALS WHO TESTIFIED EARLIER, VALERIE GARCIA AND DESMOND PACHECO?

A YES.

Q YOU SAID THAT TONI AND SONJA -- WERE THEY THERE, ALSO?

A YES.

Q DID YOU SEE THEM ARRIVE, OR THEY WERE ALREADY THERE?

A I BELIEVE THEY WERE ALREADY THERE, ALSO. I BELIEVE THEY WENT RIGHT FROM AFTER SCHOOL.

Q DO YOU KNOW HOW THEY GOT THERE?

A NO, I DON'T KNOW.

Q NOW, AFTER YOU ARRIVED AT THE TOWN CENTER AND VALERIE AND DESMOND AND TONI AND SONJA WERE THERE THE EARLY [568] AFTERNOON OF

SEPTEMBER 22, WHAT IS THE NEXT THING YOU RECALL DOING?

A I BELIEVE ME AND MANUEL AND JASON LEFT AND WENT BACK TO -- WALKED BACK TO MANUEL'S HOUSE.

Q AND DO YOU KNOW MORE OR LESS WHAT TIME YOU RETURNED TO MANUEL'S HOUSE?

A NO, I DON'T.

Q WHEN YOU RETURNED TO MANUEL'S HOUSE, WAS ANYONE ELSE HOME?

A I BELIEVE HIS MOTHER AND TWO YOUNGER BROTHERS WERE THERE.

Q WHEN YOU AND MANUEL AND JASON RETURNED TO MANUEL'S HOME, WHAT DID YOU DO?

A WE JUST REALLY SAT AROUND AND -- TALKING AND EVERYTHING, TALKING TO HIS MOTHER AND EVERYTHING.

BEST AVAILABLE COPY

Q AND DID ANYBODY ELSE COME OVER DURING THE COURSE OF THAT AFTERNOON OR EARLY EVENING?

A YES. I BELIEVE SONJA AND TONI CAME, AND VALERIE, I BELIEVE.

Q DID SONJA AND TONI AND VALERIE COME TOGETHER OR COME SEPARATE?

A I BELIEVE THEY CAME TOGETHER.

Q DO YOU KNOW ABOUT WHAT TIME IT WAS THAT TONI AND SONJA AND VALERIE ARRIVED AT MANUEL'S HOME?

A DO, I DON'T. IT WAS GETTING DARK. I THINK IT WAS ALREADY DARK BY THE TIME THEY GOT THERE.

Q WHERE WERE YOU WHEN VALERIE AND TONI AND SONJA ARRIVED AT MANUEL'S HOUSE WHILE IT WAS GETTING DARK?

[569] A I WAS INSIDE MANUEL'S ROOM.

Q IS THAT HIS BEDROOM?

A YES, HIS BEDROOM.

Q DOES HE HAVE A LARGE BEDROOM? SMALL BEDROOM? CAN YOU GIVE US A WORD PICTURE SO WE CAN HAVE AN IDEA?

A MAYBE A LARGE BEDROOM.

Q DID IT HAVE FURNITURE?

A YES. HE HAD, I BELIEVE, LIKE A SMALL RECLINER CHAIR AND A LARGE CABINET AND TWO SMALL CABINETS, AND HE HAD A LARGE BED, I BELIEVE, A QUEEN-SIZE OR KING-SIZE BED.

Q ANY OTHER TABLES, DRESSERS, OR CHAIRS?

A NO. I THINK THAT WAS EVERYTHING.

Q WHAT WERE YOU DOING IN MANUEL'S ROOM WHEN SONJA, TONI, AND VALERIE ARRIVED?

A I BELIEVE WE WERE JUST SITTING AROUND LISTENING TO THE RADIO.

Q AND WHAT HAPPENED AFTER THOSE GIRLS ARRIVED?

A I THINK THEY WENT AND GOT BEER. GOTTEN SOME BEER OR SOMETHING.

Q DO YOU REMEMBER BEER?

A YES.

Q AT THE LOCATION?

A YES.

Q WHAT KIND OF BEER WAS IT?

A THERE WERE BUDWEISER, THE 40-OUNCE BOTTLES, AND THERE WAS BOONE'S STRAWBERRY HILL AND, I BELIEVE, A BOTTLE -- FULL BOTTLE OF VODKA OR TEQUILA.

Q DO YOU KNOW IF THERE HAD BEEN ANY ALCOHOL IN [570] THE HOUSE BEFORE THEIR ARRIVING?

A I DON'T KNOW. I DON'T THINK THERE WAS.

Q DO YOU KNOW FOR SURE?

A NO, I DON'T. BUT THE ALCOHOL THAT WAS BROUGHT, IT WAS IN BAGS LIKE FROM A STORE.

Q AND DO YOU KNOW WHO BROUGHT THE BEER?

A I'M NOT REALLY SURE WHO BROUGHT IT BECAUSE I WAS IN THE ROOM AND IT WAS BROUGHT TO THE ROOM.

Q DID YOU GO TO THE STORE TO GET THE BEER?

A NO, I DID NOT.

Q YOU JUST REMEMBER BEER COMING IN?

A YES.

Q IN BAGS?

A YES.

Q WHAT HAPPENED AFTER THE BEER AND BAGS CAME?

A WELL, EVERYBODY JUST CONTINUED TO SIT AROUND AND LISTEN TO THE RADIO AND HAD THEIR

OWN BEER WITH THEM OR THEIR OWN DRINKS, AND EVERYBODY WAS JUST PRETTY MUCH DRINKING.

Q HOW ABOUT YOU? WERE YOU DRINKING?

A YES, I WAS.

Q WHAT WERE YOU DRINKING?

A THE BUDWEISER 40-OUNCE, AND I BELIEVE I HAD BOONE'S STRAWBERRY HILL.

Q ABOUT WHAT TIME WAS IT THAT PEOPLE STARTED DRINKING?

A I DON'T REALLY RECALL.

Q WAS IT DAYLIGHT?

[571] A NO. IT WAS IN THE EVENING. MAYBE 7:00 OR 8:00, 9:00, MAYBE. AROUND THERE.

Q THAT'S WHEN YOU STARTED DRINKING AT MANUEL'S HOUSE?

A YES.

Q HAD YOU BEEN DRINKING AT MANUEL'S HOUSE EARLIER THAT EVENING?

A NO.

Q HOW ABOUT EARLIER THAT DAY? DID YOU --

A NO.

Q -- DRINK ANYTHING?

A NO, I DID NOT.

Q AND IN ADDITION TO DRINKING BEER AND WINE, WERE THERE ANY DRUGS THERE?

A YES. THERE WAS MARIJUANA.

Q AND WHERE WAS THE MARIJUANA?

A WELL, IT WAS IN THE ROOM OVER THERE, BUT --

Q DO YOU KNOW HOW THE MARIJUANA GOT THERE?

A NO, I DON'T.

Q AND HOW MUCH MARIJUANA WAS THERE?

A I NEVER REALLY SAW HOW MUCH, BUT I MAYBE SEEN A COUPLE JOINTS OR SO.

Q DID YOU PARTAKE IN THE MARIJUANA, TOO?

A YES, I DID.

Q AND HOW MUCH MARIJUANA DID YOU SMOKE?

A MAYBE A JOINT OR SO.

Q WAS THAT THROUGHOUT THE EVENING?

A WELL, THAT WAS ALL AT ONE TIME.

[572] Q HOW ABOUT BEER? HOW MUCH BEER DO YOU THINK YOU DRANK?

A MAYBE ALMOST TWO OF THE 40 OUNCES.

Q FORTY OUNCES ARE THE LARGE BEERS?

A YES.

Q YOU THINK YOU HAD TWO?

A YES. AROUND TWO.

Q HOW ABOUT WINE? HOW MUCH WINE?

A MAYBE A HALF A BOTTLE OF WINE OR SO.

Q WHEN YOU SAY BEER AND WINE, APPROXIMATELY TWO BOTTLES, MAYBE A HALF A BOTTLE OF WINE, DID YOU EVER MEASURE IT? DID

YOU EVER SAY, "I'M GOING TO LIMIT MYSELF TO 16 OUNCES?" OR ANYTHING OF THAT SORT?

A NO.

Q YOU PRETTY MUCH DRANK?

A JUST DRANK.

Q HAVING A GOOD TIME?

A YES.

Q DID YOU HAVE A WATCH ON THAT NIGHT?

A NO, I DON'T THINK I DID.

Q DID YOU EVER LOOK AT A CLOCK OR TIME WHEN YOU STARTED DRINKING, WHEN YOU STOPPED, ANYTHING OF THAT SORT?

A NO, I DID NOT.

Q THESE ARE APPROXIMATIONS?

A YES.

Q HOW DID YOU FEEL DRINKING BEER AND DRINKING WINE AND SMOKING MARIJUANA?

A WELL. I FELT KIND OF DRUNK, PLUS I HAD HAD THE [573] MARIJUANA EARLIER. AND, YEAH, I WAS KIND OF DRUNK, BUT I MEAN I WASN'T STAGGERING OR I WASN'T WHERE I WAS SLURRED SPEECH OR ANYTHING LIKE THAT.

Q YOU WEREN'T OUT OF CONTROL?

A YES, I WAS NOT OUT OF CONTROL.

Q BUT YOU WERE FEELING DRUNK?

A YES.

Q AFTER VALERIE AND SONJA ARRIVED AND AFTER ALL THE BEER ARRIVED AND TONI WAS THERE, JASON WAS THERE, MANUEL WAS THERE, WHAT IS THE NEXT THING OF SIGNIFICANCE YOU RECALL HAPPENING?

WAS THERE OTHER PEOPLE ARRIVING?

A I BELIEVE SO. I BELIEVE AFTER SOMEONE HAD GONE TO USE THE PHONE AND COME BACK AND THERE WAS SOME OTHER PEOPLE WITH THEM.

Q WHEN YOU SAY "SOMEONE HAD GONE TO USE THE PHONE," DO YOU KNOW WHAT PHONE?

A THE PAY PHONES IN FRONT OF JACK'S MARKET.

Q BACK IN SEPTEMBER OF '95, DO YOU KNOW IF MANUEL HAS A PHONE IN THE HOUSE?

A NO, HE DID NOT.

Q DID HE HAVE A CELL PHONE OR ANY KIND OF PHONE IN THE HOUSE?

A NO, HE DID NOT.

Q WHENEVER YOU NEEDED A PHONE, WERE THERE ANY PHONES YOU WOULD ROUTINELY USE OR CUSTOMARILY USE BACK IN SEPTEMBER OF 1995 WHILE YOU WERE BACK AT MANUEL'S HOUSE?

A YES. EVERYBODY WHO WANTED OR HAD TO USE THE [574] PHONES WOULD HAVE TO USE THE PAY PHONES IN FRONT OF JACK'S MARKET.

Q THAT WAS THE PHONE BANKS PREVIOUSLY DEPICTED IN DEFENSE EXHIBIT "AA"?

A YES.

Q HAD YOU EVER USED THOSE PHONES THERE BEFORE?

A YES, I HAD.

Q ONCE SOMEBODY WENT TO USE THE PHONES, WHAT'S THE NEXT THING YOU REMEMBER?

A MAYBE THEM RETURNING FIVE, TEN MINUTES LATER. AND I BELIEVE -- I DON'T KNOW IF THERE WERE ONE OR TWO OTHER PEOPLE WITH THEM.

Q WHO WAS THE PERSON THAT WENT TO THE PHONES, IF YOU RECALL?

A I BELIEVE IT WAS VALERIE.

Q HOW LONG WAS VALERIE GONE?

A I BELIEVE FIVE, TEN MINUTES.

Q ARE THESE EXACT TIMES?

A APPROXIMATIONS.

Q AND WHEN VALERIE RETURNED, DO YOU KNOW WHO SHE RETURNED WITH?

A I BELIEVE TWO MALES.

Q AND DO YOU RECALL SPECIFICALLY WHO THESE TWO MALES MAY HAVE BEEN?

A I KNEW ONE OF THEM AT THE TIME. ONE WAS DESMOND. AND THE OTHER ONE, I DIDN'T KNOW WHO HE WAS.

Q YOU DIDN'T KNOW HIM AT THAT TIME?

A YES.

[575] Q DID YOU LATER DETERMINE WHO THAT OTHER MALE WAS?

A NO FURTHER THAN MAYBE ONE OF VALERIE'S FRIENDS.

Q DID YOU EVER PUT A NAME TO THAT PERSON?

A NO.

Q SO THIS WAS SOME PERSON THAT CAME TO THE PARTY AND WAS THERE?

A YES.

Q HOW LONG WAS HE THERE?

A PROBABLY THE REST OF THE NIGHT.

Q DID HE EVENTUALLY LEAVE?

A YES. HE LEFT WITH VALERIE AND, I BELIEVE, DESMOND.

Q AND ONCE VALERIE RETURNED, DID YOU, VALERIE, OR ANYONE LEAVE THE PARTY?

A I BELIEVE I HAD LEFT ONCE, ONCE OR TWICE.

Q WHEN YOU LEFT THE PARTY ONCE OR TWICE -- LET'S DEAL WITH THE FIRST TIME. DO YOU KNOW WHERE YOU WENT?

A I BELIEVE I HAD GONE TO THE PHONES BECAUSE I GOTTEN A PAGE, I BELIEVE.

Q AND DO YOU RECALL WHO PAGED YOU?

A NO, I DON'T.

Q HOW LONG DID YOU STAY AT THE PHONES?

A NO MORE THAN FIVE MINUTES.

Q ARE THESE THE PHONES IN FRONT OF JACK'S MARKET?

A YES, THEY ARE.

[576] Q WHAT DID YOU DO AFTER YOU RECEIVED THE PAGE AND WENT TO JACK'S MARKET?

A I JUST CALLED THE PERSON. AND AFTER I FINISHED, I WENT BACK TO THE HOUSE.

Q WHEN YOU WENT TO JACK'S MARKET TO RETURN A PAGE AND MAKE A CALL, DID YOU GO THERE ALONE, OR DID YOU GO THERE WITH OTHER PEOPLE?

A I BELIEVE THE FIRST TIME I WENT ALONE.

Q AND WHEN YOU WENT ALONE, DID YOU TAKE THAT PATH FROM MANUEL'S HOUSE THAT GOES INTO THE REAR OF THE MALL?

A YES, I DID.

Q AND DID YOU GO TO THE REAR OF THE MARKET OR WALK TOWARDS THE FRONT OF THE MARKET?

A THE FRONT OF THE MARKET.

MR. GUTIERREZ: MAY HE STEP DOWN, YOUR HONOR?

THE COURT: YES.

Q SHOW THE LADIES AND GENTLEMEN OF THE JURY MORE OR LESS THE PATH YOU TRAVELED WHEN YOU WOULD GO USE THE PHONES.

A FROM THE REAR OF MANUEL'S HOUSE, THROUGH THE END OF THE ALLEY TO THE ENTRANCE OF THE MALL AND AROUND SIDE -- I BELIEVE THERE'S A CLEANERS RIGHT HERE, THE CLEANER. I WENT IN BETWEEN THE CLEANERS AND KENTUCKY FRIED CHICKEN, AND I WOULD WALK IN FRONT OF THE -- ALL THE STORES, MAYBE FOUR OR

FIVE STORES IN FRONT OF JACK'S MARKET, TO THE PHONE.

Q THE KENTUCKY FRIED CHICKEN, IS THAT THE [577] BUILDING WITH THE RED AROUND IT?

A YES. NEXT TO THE SERVICE CENTER.

Q SO YOU WENT BETWEEN THE KENTUCKY FRIED CHICKEN TO THE BUILDING JUST TO THE WEST OF IT?

A YES.

Q AFTER YOU WERE THERE FOR APPROXIMATELY A FEW MINUTES AND MADE YOUR CALL, WHAT DID YOU DO NEXT?

A WENT BACK TO MANUEL'S HOUSE.

Q WHO WAS THERE, IF YOU RECALL?

A I BELIEVE MANUEL, SONJA, TONI, JASON, AND DESMOND WAS THERE, AND THE OTHER MAN THAT I DIDN'T KNOW HIS NAME.

Q DID ANYONE ELSE ARRIVE AT THE PARTY?

A NO, I DON'T BELIEVE SO.

Q WHAT HAPPENED ONCE YOU RETURNED TO THE PARTY? WHAT WAS GOING ON?

A EVERYBODY WAS PRETTY MUCH HAVING A GOOD TIME LISTENING TO MUSIC, DRINKING, AND EVERYTHING. SOME WOULD GO IN AND OUT OF THE ROOM, WALKING AROUND THE HOUSE, THINGS LIKE THAT.

Q THE PARTY -- WHERE WAS THE PARTY AT? WAS IT IN MORE THAN ONE ROOM?

A NO. IT WAS MOSTLY IN MANUEL'S BEDROOM, BUT SOMETIMES YOU WOULD GO IN THE KITCHEN OR SOMETHING AND TALK.

Q ANY OTHER AREAS OF THE HOUSE?

A NOT THAT I REMEMBER, NO.

Q AND HOW LONG DID THIS PARTY LAST?

A MAYBE A GOOD THREE, FOUR HOURS.

[578] Q AND DURING THIS THREE OR FOUR HOURS THAT PEOPLE WERE HAVING A GOOD TIME PARTYING, WERE PEOPLE DRINKING?

A YES.

Q WERE THEY SMOKING DOPE?

A I BELIEVE THEY WERE.

Q WHAT HAPPENED NEXT AFTER YOU RETURNED FROM THE PHONES?

A I HAD JUST RETURNED TO THE ROOM, AND I CONTINUED DRINKING AND JUST LISTENING TO MUSIC WITH EVERYBODY. AND THEN I BELIEVE A GIRL -- REGINA AND SALINA SHOWED UP. THEY CAME TO THE FRONT OF MANUEL'S HOUSE, I THINK.

Q REGINA AND SALINA, WHEN THEY CAME, DO YOU KNOW HOW THEY GOT THERE?

A NO, I DON'T.

Q THEY SHOWED UP AT THE PARTY?

A YES.

Q DO YOU KNOW ABOUT WHAT TIME IS WAS?

A NO. IT WAS LATE, THOUGH.

Q WHEN YOU SAY THAT REGINA AND SALINA SHOWED UP AND THE PARTY WAS ABOUT THREE HOURS, WAS IT THE BEGINNING OF THE PARTY, THE MIDDLE, OR THE END OF THE PARTY?

A MAYBE CLOSE TO THE END OF THE PARTY.

Q DID REGINA AND SALINA ARRIVE WITH ANYONE OR BY THEMSELVES?

A I BELIEVE JUST THEM TWO.

Q WHAT HAPPENED AFTER THEY ARRIVED AT THE PARTY?

[579] A THEY WERE JUST KIND OF SITTING AROUND BORED. THEY DIDN'T HAVE NO DRINKS. I BELIEVE REGINA -- ONE OF THE TWO HAD GOTTEN PAGED, AND THEN THEY WENT TO THE MARKET TO USE THE PHONES.

Q WHILE YOU WERE THERE THAT NIGHT, YOU NEVER OBSERVED REGINA TO CONSUME ALCOHOL OR DRINKS?

A NO. I NEVER SAW HER DRINKING.

Q WHAT ABOUT SALINA?

A NO. I NEVER SAW HER, EITHER.

Q WHAT ABOUT VALERIE?

A I BELIEVE -- I THINK SHE WAS DRINKING A LITTLE BIT.

Q WHAT ABOUT DESMOND?

A VALERIE -- I THINK SHE WAS DRINKING A LITTLE BIT OF THE WINE.

Q WHAT ABOUT DESMOND?

A YES. HE WAS DRINKING.

Q HOW ABOUT MANUEL?

A YES.

Q WAS DESMOND DRINKING CONTINUOUSLY?

A YES, HE WAS.

Q HOW ABOUT MANUEL?

A YES.

Q AFTER REGINA AND SALINA ARRIVED AT THE PARTY, TELL THE LADIES AND GENTLEMEN OF THE JURY WHAT IS THE NEXT THING THAT YOU REMEMBER HAPPENING.

A I JUST REMEMBER HAPPENING -- ONE OF THEM HAD GOTTEN PAGED, AND THEY WENT TO THE PHONES. AND I BELIEVE [580] THAT WAS THE LAST I SAW OF THEM THAT NIGHT. I BELIEVE THEY STAYED AT THE PHONES OR THEY WERE WAITING FOR A RIDE OR SOMEBODY WAS GOING TO PICK THEM UP OR THEY WERE WAITING FOR SOMEBODY TO COME PICK THEM UP TO GO TO SOMEBODY'S HOUSE.

Q DO YOU EVER REMEMBER REGINA AND SALINA RETURNING TO THE ACTUAL PARTY?

A NO.

Q DID YOU HAVE OCCASION TO LEAVE THE PARTY AFTER REGINA AND SALINA ARRIVED?

A NO, I DON'T BELIEVE I DID. I THINK I STAYED AT THE HOUSE.

Q DID ANY OTHER PEOPLE START COMING TO THE PARTY, OTHER PEOPLE ARRIVED AT THE PARTY?

A NO, I DON'T THINK SO.

Q YOU SAID YOU MAY HAVE USED THE PHONES A SECOND TIME. DO YOU REMEMBER HAVING TO USE THE PHONES A SECOND TIME?

A I THINK I TRIED TO, BUT NO ONE WAS THERE. SOMETHING LIKE THAT.

Q NOW, PRIOR TO SEPTEMBER 23, OR THE LATE NIGHT OF SEPTEMBER 22, DID YOU KNOW THIS MAN IN COURT, PAUL SOTO?

A NO, I DID NOT.

Q DID YOU EVER SEE HIM THERE AT THE PARTY THAT NIGHT?

A YES. I BELIEVE LATER ON. THAT WAS THE ONE WHO AT THAT TIME THE NAME I DID NOT KNOW THAT I BELIEVE CAME WITH DESMOND OR VALERIE.

Q YOU THINK HE ARRIVED WITH DESMOND OR VALERIE?

[581] A YES.

Q DO YOU KNOW ABOUT WHAT TIME PAUL SOTO ARRIVED?

A NO, I DON'T.

Q NOW, AT ANY TIME WHILE YOU WERE AT THE PARTY THAT NIGHT DID YOU EVER SEE A GUN?

A NO, I DID NOT.

Q AT ANY TIME WHILE YOU WERE AT THE PARTY THAT NIGHT WAS THERE EVER ANY DISCUSSIONS ABOUT TAKING SOMEBODY'S CAR?

A NO, THERE WAS NOT.

Q AT ANY TIME WHILE YOU WERE AT THE PARTY THAT NIGHT WAS THERE EVER ANY

DISCUSSION ABOUT TAKING SOMEBODY'S MONEY OR ROBBING THEM?

A NO, THERE WASN'T.

Q NOW, WHAT HAPPENED NEXT TOWARDS THE END OF THE PARTY?

A I BELIEVE SONJA AND TONI HAD TO GET HOME, SO I THINK MANUEL'S UNCLE HAS TAKEN THEM HOME, GIVEN THEM A RIDE HOME.

Q MANUEL'S UNCLE?

A YES.

Q DO YOU KNOW WHAT TIME MANUEL'S UNCLE TOOK SONJA HOME?

A MAYBE 10:00, 10:30. AROUND THERE.

Q WAS MANUEL'S UNCLE AT THE PARTY, ALSO?

A NO. I BELIEVE HE HAD JUST STOPPED BY TO TALK TO MANUEL'S MOTHER, AND MANUEL HAD

CAUGHT HIM AND ASKED HIM FOR A RIDE WHILE HE WAS THERE.

[582] Q DO YOU KNOW ABOUT WHAT TIME IT WAS THAT MANUEL'S UNCLE TOOK SONJA AND HER FRIEND HOME?

SONJA'S FRIEND WAS WHO?

A TONI.

IT WAS MAYBE AROUND 10:00, I THINK, BECAUSE I REMEMBER HER SAYING SHE HAD TO BE HOME BEFORE 10:00 OR 10:30.

Q WHAT HAPPENED AFTER THEY LEFT?

A WELL, WHEN THEY HAD LEFT, MANUEL HAD GONE WITH THEM AND I HAD JUST -- HE ASKED ME TO STAY AT THE PARTY, NOT TO LEAVE, STAY WITH EVERYBODY ELSE THERE. AND SO I HAD JUST STAYED THERE, AND WE CONTINUED LISTENING TO MUSIC. AND SOME WERE STILL DRINKING, I THINK.

Q WAS THIS THROUGHOUT THE HOUSE OR PARTS OF THE HOUSE?

A NO. EVERYBODY STAYED IN MANUEL'S BEDROOM.

Q SO MANUEL ACTUALLY LEFT, ALSO?

A YES.

Q WITH HIS UNCLE?

A YES.

Q HOW LONG WAS MANUEL GONE WITH HIS UNCLE WHEN HE WENT TO TAKE THE YOUNG LADIES HOME?

A I BELIEVE MAYBE 20 MINUTES.

Q AND ANY REASON YOU DIDN'T GO?

A WELL, HE WANTED ME TO STAY THERE WITH THE OTHER PEOPLE IN THE HOUSE AND NOT TO LEAVE THEM THERE ALONE.

Q AND WHILE MANUEL WAS GONE FOR THE 20 MINUTES, DID PEOPLE CONTINUE TO DRINK AND PARTY?

[583] A YES.

Q WAS THERE MUSIC?

A YES, THERE WAS.

Q ANY DANCING?

A NO. I DON'T BELIEVE THERE WAS.

Q HOW WERE YOU FEELING ABOUT THAT TIME?

A WELL, I WAS, I BELIEVE, PRETTY MUCH TO THE END OF MY BEER AND THE WINE, SO I WAS DRUNK.

Q SO WHAT HAPPENED? DID MANUEL EVER RETURN?

A YES, HE DID. HE RETURNED HOME 20 MINUTES LATER; 15, 20 MINUTES LATER.

Q WHAT HAPPENED AFER MANUEL RETURNED FROM LEAVING WITH THE GIRLS AND WITH THE UNCLE?

A WHEN SONJA AND TONI LEFT AND REGINA AND SALINA LEFT, THE PARTY KIND OF STARTED BREAKING DOWN.

Q REGINA AND SALINA, THEY LEFT AFTER TONI AND HER GIRLFRIEND, OR BEFORE?

A I BELIEVE THEY LEFT BEFORE.

Q AND YOU SAID THE PARTY STARTED BREAKING DOWN. ABOUT WHAT TIME WAS THIS THAT THE PARTY WAS BREAKING DOWN?

A MAYBE AROUND 11:00.

Q AND AFTER THE PARTY WAS BREAKING DOWN AROUND 11:00, HOW MANY PEOPLE WERE THERE AFTER REGINA HAD LEFT, SALINA HAD LEFT, TONI AND HER GIRLFRIEND?

A MANUEL HAD RETURNED. I BELIEVE IT WAS ME, MANUEL AND, I THINK, THREE OTHERS.

Q WAS PAUL SOTO THERE?

A YES, HE WAS.

[584] Q WHO ELSE WAS THERE?

A DESMOND AND VALERIE.

Q SO YOU HAD DESMOND, VALERIE, PAUL, MANUEL, AND MIKE THERE?

A YES.

Q THIS WAS TOWARDS THE END OF THE PARTY?

A YES, IT WAS.

Q WHAT HAPPENED AFTER MANUEL RETURNS?

A ME AND MANUEL STAYED AT THE HOUSE, AND I BELIEVE VALERIE HAD TO GO HOME, OR THEY WERE GETTING TIRED OF STAYING OR SOMETHING. SO I BELIEVE THEY LEFT TO USE THE PHONES OR SOMETHING.

Q WHEN YOU SAY "I BELIEVE THEY LEFT," WHO ARE YOU REFERRING TO AS "THEY"?

A IT WAS VALERIE, DESMOND, AND PAUL.

Q AND WHEN VALERIE, DESMOND, AND PAUL LEFT -- YOU SAID TO THE PHONES. WAS THERE ANY REASON THAT YOU BELIEVE THEY WENT TO THE PHONES?

A I THINK MANUEL HAD TOLD ME AFTER THAT THEY HAD LEFT AND THAT THEY WERE GOING TO TRY TO FIND A RIDE HOME OR USE THE PHONES.

Q WHAT DID YOU AND MANUEL DO AFTER EVERYBODY LEFT THE PARTY?

A WE HAD PRETTY MUCH STAYED THERE AND KIND OF ARRANGED HIS ROOM BACK THE WAY EVERYTHING WAS AND CLEANED UP, AND BOTH OF US CHANGED. I CHANGED INTO SOME SHORTS WHICH I WAS GOING TO SLEEP IN OVERNIGHT, AND I BELIEVE MANUEL CHANGED, TOO.

[585] Q NOW, YOU SAID YOU CLEANED UP. WHAT DO YOU MEAN YOU CLEANED UP?

A WELL, CLEANED UP THE TRASH AND THREW AWAY SOME BOTTLES LEFT THERE. CLEANED UP -- AND THERE WAS SOME CIGARETTE BUTTS. AND CLEANED EVERYTHING UP.

Q STRAIGHTENED?

A STRAIGHTENED UP HIS ROOM, YES.

Q YOU SAID YOU CHANGED. WHAT DID YOU CHANGE INTO?

A JUST SOME SHORTS AND -- I HAD HAD A WHITE SHIRT, SO I CHANGED INTO SHORTS.

Q WHY DID YOU CHANGE INTO SHORTS?

A I WAS STAYING THE NIGHT. THOSE ARE KIND OF LIKE MY SLEEPING CLOTHES.

Q WERE YOU PLANNING TO LEAVE AFTER YOU PUT ON THE SHORTS?

A NO. THAT WAS PRETTY MUCH THE NIGHT FOR US.

Q THE PARTY WAS OVER?

A THE LAST PEOPLE HAD LEFT, AND THAT WAS IT.

Q WHEN YOU WERE INTERVIEWED BY DETECTIVE COMSTOCK, DID YOU TELL HER ABOUT CHANGING AND PUTTING ON SHORTS?

A YES, I DID.

Q TELL HER ABOUT CLEANING THE HOUSE?

A YES, I DID.

Q NOW, AFTER YOU CHANGED INTO SHORTS AND AFTER YOU CLEANED THE HOUSE, WHAT HAPPENED?

A I BELIEVE WE HAD FINISHED CLEANING AND MANUEL [586] WANTED TO CALL ONE OF THE GIRLS THAT HE HAD TAKEN HOME THAT MIGHT. WHEN HE DROPPED HER OFF, SHE TOLD HIM TO CALL HER

WHEN HE GOT HOME. SO HE HAD BEEN ASKING ME A FEW TIMES TO GO BACK WITH HIM AND GO USE THE PHONES SO HE COULD CALL THE GIRL.

Q DO YOU KNOW IF MANUEL GOT ANY PAGES, IF YOU RECALL?

A NO. HE DIDN'T HAVE A PAGER I DON'T THINK.

Q NOW, ONCE YOU WERE IN YOUR SHORTS AND DECIDED TO GO BACK TO THE PHONES, YOU AND MANUEL, DID YOU GO IN YOUR SHORTS?

A NO. I FINALLY AGREED TO GO WITH HIM AND GOT DRESSED AGAIN.

Q ABOUT WHAT TIME WAS IT THAT YOU TOOK YOUR SHORTS OFF AND GOT DRESSED AGAIN?

A MAYBE CLOSE TO 12:00, 11:30 OR 12:00.

Q AND ARE THESE BASICALLY ESTIMATES?

A YES.

Q DID YOU LOOK AT A CLOCK OR WATCH?

A NO, I DIDN'T.

Q WHEN YOU HAD BEEN TO THE MALL EARLIER BEFORE YOU PUT ON THE SHORTS TO MAKE PHONE CALLS, DID YOU EVER NOTICE IF THERE WERE ANY POLICE OFFICERS OR POLICE CARS AT THE SUBSTATION?

A YES. WHEN WE HAD LEFT TO GO USE THE PHONE WHEN I WENT WITH MANUEL THERE WAS A LITTLE BLACK-AND-WHITE PATROL CAR, I BELIEVE, IN FRONT OF THE SUBSTATION.

Q WAS THIS BEFORE YOU CHANGED OUT OF YOUR SHORTS [587] OR AFTER?

A THIS WAS AFTER.

Q AFTER YOU CHANGED OUT OF YOUR SHORTS?

A YES.

Q AND WHEN YOU AND MANUEL WENT TO THE PHONES, WHAT PHONES DID YOU GO TO?

A THE PHONES IN FRONT OF JACK'S MARKET.

Q THE PHONES YOU HAD BEEN USING EARLIER THAT EVENING?

A YES.

Q PHONES YOU HAD USED ON PRIOR OCCASIONS?

A YES.

Q WHAT HAPPENED, SIR, WHEN YOU ARRIVED THERE IN FRONT OF JACK'S MARKET?

A WELL, WE HAD STAYED PRETTY MUCH -- I PRETTY MUCH STAYED WITH MANUEL WHILE HE WAS ON THE PHONE, AND I BELIEVE -- I'M NOT SURE, BUT I BELIEVE THAT I WENT INTO THE DONUT SHOP AND THAT I GOT A DONUT. AND I BOUGHT SOME CIGARETTES, I BELIEVE.

Q DID YOU EVER SEE VALERIE WAVE DOWN A CAR OR WAVE DOWN A TRUCK OR ANYTHING OF THAT SORT?

A NO, I DIDN'T.

Q YOU DIDN'T SEE IT?

A NO. I WAS TOLD AFTER THAT.

MR. BERNSTEIN: OBJECTION; HEARSAY.

THE COURT: SUSTAINED.

Q BY MR. GUTIERREZ: YOU SAID, I WAS TOLD AFTERWARDS. DID PEOPLE TALK ABOUT WHAT HAPPENED THAT NIGHT?

[588] A YES, THEY DID.

Q DID THAT INCLUDE MANUEL?

A YES.

Q OTHER PEOPLE?

A YES.

Q PEOPLE WERE TALKING ABOUT WHAT HAPPENED THAT NIGHT?

A YES.

Q EVERYBODY WAS PRETTY UPSET OR NERVOUS OR JUST DISCUSSING IT?

A ACTUALLY. NERVOUS. WE WERE TALKING ABOUT IT.

Q SO BASED ON YOUR PERCEPTION THAT NIGHT, BASED ON WHAT YOU SAW, NOT WHAT YOU HEARD DOWN THE LINE, DID YOU EVER SEE VALERIE WAVE DOWN ANYBODY, ASK ANYBODY FOR MONEY?

A NO, I DID NOT.

Q YOU DON'T RECALL THAT?

A NO.

Q WHAT HAPPENED NEXT?

A WELL, AFTER I GOT TO THE DONUT SHOP -- I BELIEVE I HAD STOPPED FOR FEW SECONDS OR A MINUTE OR TWO AND TALKED TO VALERIE, AND SHE HAD TOLD ME THAT, I BELIEVE, SHE HAD CALLED SOMEBODY OR --

MR. BERNSTEIN: OBJECTION AS HEARSAY.

THE COURT: ANY FURTHER WILL BE.

MR. GUTIERREZ: IT'S NOT OFFERED FOR THE TRUTH OF THE MATTER.

THE COURT: SUSTAINED.

Q BY MR. GUTIERREZ: WAS THERE -- WE REALLY [589] CAN'T GO INTO THE CONTENTS OF WHAT PEOPLE ARE SAYING. IT'S HEARSAY. SO RATHER THAN WHAT PEOPLE TOLD YOU -- DID YOU HAVE A CONVERSATION WITH VALERIE?

A YES, I DID.

Q HOW LONG WAS THIS CONVERSATION WITH VALERIE?

A MAYBE JUST A COUPLE MINUTES.

Q WERE THERE OTHER PEOPLE CONVERSING IN THE AREA?

A I BELIEVE SO.

Q AND WHERE WERE THEY CONVERSING?

A IN THE SAME AREA, I BELIEVE, NOT TOO FAR.

Q WHEN YOU SAY "NOT TOO FAR," WHERE WOULD THAT HAVE BEEN?

A I BELIEVE THEY WERE BY THE PLANTERS.

Q DID YOU EVER SEE OTHER CARS COME UP AND DRIVE AND PEOPLE TALK TO PEOPLE IN CARS OR ANYTHING OF THAT SORT?

A NO, I DID NOT.

Q HOW LONG -- THERE WAS A SHOOTING THERE THAT NIGHT?

A I BELIEVE THERE WAS, YES.

Q YOU BELIEVE THERE WAS, OR YOU KNOW THERE WAS?

A YES, THERE WAS.

Q HOW LONG HAD YOU BEEN THERE AT THE PHONES TO THE TIME THE SHOT WAS FIRED?

MS. NAKAKI: OBJECTION, YOUR HONOR. THAT'S NOT WHAT THIS WITNESS HAS TESTIFIED TO ABOUT BEING AT THE PHONES AT THAT TIME.

THE COURT: OVERRULED.

[590] MR. GUTIERREZ: THANK YOU, YOUR HONOR.

Q HOW LONG -- YOU INDICATED -- JUST SO IT'S CLEAR, YOU INDICATED THAT YOU AND MANUEL DECIDED TO CHANGE, PUT YOUR CLOTHES BACK ON, GO TO THE PHONE STALLS?

A YES.

Q AT SOME TIME YOU ARRIVED AT THE PHONES HERE THAT ARE IN FRONT OF JACK'S MARKET, CORRECT?

A YES.

Q LATER THAT EVENING THERE WAS A SHOOTING BY THE DUMPSTER IN FRONT OF THE DONUT STORE?

A YES.

Q WHAT WAS THE SPAN OF TIME, MORE OR LESS, BETWEEN THE TIME THAT YOU FIRST ARRIVED

AT THE PHONE BANKS THERE IN FRONT OF JACK'S MARKET AND THE SHOOTING?

A MAYBE TEN MINUTES; FIVE, TEN MINUTES.

Q RATHER QUICKLY?

A YES.

Q NOW, WITHOUT TELLING ME WHAT VALERIE WAS TELLING YOU, WAS THERE EVER ANY CONVERSATION ABOUT A RIDE OR ANYTHING OF THAT SORT?

A NO, I DON'T THINK THERE WAS.

Q AND IN ADDITION TO CONVERSING WITH VALERIE, DID YOU CONVERSE WITH OTHER PEOPLE?

A NO, I DID NOT.

Q DO YOU KNOW WHERE MANUEL WAS THROUGHOUT THOSE FIVE TO TEN MINUTES?

A I BELIEVE HE WAS ON THE PHONE.

Q WERE YOU PAYING ATTENTION TO MANUEL?

[591] A NO, I WAS NOT.

Q WERE YOU PAYING ATTENTION TO ANY OF THE OTHER PEOPLE THAT WERE THERE?

A NO, I WAS NOT.

Q WERE YOU PAYING ATTENTION TO DESMOND?

A NO, I WAS NOT.

Q WHO ELSE WAS THERE BESIDES VALERIE WHEN YOU ARRIVED?

A I BELIEVE DESMOND AND PAUL.

Q WHERE WAS VALERIE WHEN YOU HAD THIS CONVERSATION WITH HER?

A OUT ON THE SIDEWALK, MAYBE CLOSE TO BEING IN BETWEEN THE PLANTER THAT SEPARATES JACK'S MARKET AND THE DONUT SHOP.

Q AND YOU SAY "THE SIDEWALK." WOULD THAT BE THE SIDEWALK IN FRONT O F THE PLANTER AREA?

A YES.

Q AND DO YOU KNOW WHERE MANUEL WAS WHEN YOU WERE KIND OF TALKING TO VALERIE?

A NO, I DO NOT.

Q WHAT ABOUT PAUL?

A NO. I DON'T KNOW WHERE HE WAS AT.

Q WHAT ABOUT DESMOND?

A NO.

Q DID YOU EVER GO TO ANY OTHER AREAS OTHER THAN AROUND THE DONUT SHOP, AROUND THE PHONE BANKS, OR IN FRONT OF THE PLANTER, THE SIDEWALK AREA?

A YES. I KIND OF GONE OFF ON MY OWN WANDERING [592] AROUND THE MALL.

Q AND WHAT HAPPENED NEXT?

A I BELIEVE -- I'M NOT REALLY SURE. CAN YOU ASK ME THE QUESTION AGAIN?

Q YOU SAID YOU WERE WALKING AROUND THE AREA. WHAT AREAS WERE YOU WALKING AROUND?

A I HAD WALKED BY A FAST FOOD RESTAURANT CALLED THE GREEN BURRITO. AND IN BETWEEN THE GREEN BURRITO AND THE CLOTHING STORE THERE'S CHAIRS THERE, LIKE FOR PEOPLE TO GO OUT AND EAT. THERE'S -- DURING THE LUNCH BREAK I HAD WANDERED BY THERE. I HAD GONE OUT, I BELIEVE, BACK IN FRONT OF THE YOSHINOYA RESTAURANT.

Q DID YOU NOTICE ANY VEHICLES OR TRUCKS OR ANYTHING LIKE THAT?

A I BELIEVE IT WAS A TRUCK IN FRONT OF THE DUMPSTER.

Q WHAT KIND OF TRUCK?

A IT LOOKED KIND OF LIKE JUST A WHITE OLD TRUCK.

Q WHAT ABOUT DELIVERY TRUCKS?

A I THINK LATER A DELIVER TRUCK PULLED UP IN THE PARKING LOT.

Q WHEN YOU SAY "A DELIVERY TRUCK," WHAT ARE YOU REFERRING TO?

A LIKE IT WAS A BIG -- LIKE A DIESEL TRUCK. IT WAS REAL BIG, LIKE THE ONES THAT CARRY THINGS AROUND AND THINGS LIKE THAT.

Q WHERE WAS THE DIESEL LOCATED?

A I BELIEVE JUST BEHIND THE DUMPSTER. WHEN IT [593] HAD FINALLY COME TO A STOP, I BELIEVE BEHIND THE DUMPSTER. I'M NOT SURE.

Q THIS DIESEL TRUCK THAT WAS THERE SOMEWHERE BEHIND THE DUMPSTER -- WHEN YOU SAY "BEHIND THE DUMPSTER," WOULD IT HAVE BEEN TO THE LEFT OF PEOPLE'S A-1, OR WOULD IT HAVE BEEN TO THE RIGHT OF PEOPLE'S A-1?

A TO THE RIGHT.

Q TO THE RIGHT?

A YES.

Q TOWARDS THE END?

A YES.

Q NOW, THE GREEN BURRITO, IS THAT SOMEWHERE IN THIS AREA?

A THE GREEN BURRITO, I BELIEVE IN PEOPLE'S "A," IS ON THE -- IT'S THE BUILDING ON THE TOP RIGHT CORNER. LOOKS LIKE THERE'S, I BELIEVE, RED WRITING ON IT.

Q AND WHILE YOU WERE THERE, DID YOU EVER WALK OVER TO THE WHITE TRUCK THAT'S DEPICTED ON DOUBLE "E"?

A I HAD NEVER WALKED TO THE TRUCK, BUT I WALKED BY THE YOSHINOYA RESTAURANT IN THAT DIRECTION.

Q WHAT HAPPENED AS YOU WALKED UP THERE?

A I DON'T REMEMBER SEEING WHAT ANYBODY HAD DONE OR WHERE EVERYTHING ELSE WAS. BUT WHEN I HAD WALKED OVER THERE -- I WAS MAYBE STANDING IN BETWEEN THE TRUCK AND THE RESTAURANT FOR MAYBE 15, 20 SECONDS, MAYBE CLOSE TO HALF A MINUTE, AND I HEARD WHAT SOUNDED LIKE A GUNSHOT.

Q WHERE WERE YOU STANDING WHEN YOU HEARD THIS GUNSHOT?

[594] A MAYBE ABOUT FIVE, SIX -- MAYBE ABOUT SIX, SEVEN FEET FROM THE TRUCK.

Q IN WHAT DIRECTION WERE YOU FROM THE TRUCK? WERE YOU TOWARDS THE FRONT? THE REAR?

A I WAS TOWARDS THE REAR, I BELIEVE.

Q I WANT YOU TO STAND UP AND POINT TO THE APPROXIMATE AREA YOU WERE STANDING WHEN YOU HEARD THE SHOT.

A I WAS MAYBE STANDING RIGHT HERE (INDICATING).

Q NOW, WHAT IS DIRECTLY TO THE RIGHT OF DOUBLE "E"?

A TO THE RIGHT OVER HERE WOULD BE -- THERE'S A SIDEWALK. AND THEN THAT GOES TO -- THERE'S A DOOR TO THE YOSHINOYA RESTAURANT.

Q THE YOSHINOYA RESTAURANT, DO YOU SEE THAT IN PEOPLE'S A-1?

A YES, I DO.

Q WHERE IS THAT?

A IT'S THE ROOF TOP ABOUT IN THE CENTER OF THE PICTURE.

Q WHERE WAS THE TRUCK DEPICTED IN DEFENSE DOUBLE "E" LOCATED IN PEOPLE'S A-1?

A IT WAS, I BELIEVE, DIRECTLY IN BETWEEN THE YOSHINOYA RESTAURANT AND THE DUMPSTER.

Q BETWEEN YOSHINOYA RESTAURANT AND THE DUMPSTER IS THERE A DRIVEWAY?

A YES.

Q AND IS THERE A DRIVEWAY FOR CARS TO GO IN OPPOSITE DIRECTIONS?

[595] A YES. GO BOTH WAYS.

Q HOW MANY LANES?

A TWO.

Q TWO LANES?

A YES.

Q ONE LANE FOR WHICH WAY?

A ONE LANE FOR EAST AND ONE LANE FOR WEST.

Q AND YOU POINTED TO DOUBLE "E." I WANT YOU TO LOOK AT PEOPLE'S I-C AND SHOW THE LADIES AND GENTLEMEN OF THE JURY APPROXIMATELY WHERE YOU WERE STANDING AND YOU HEARD THE SHOT.

A I WAS APPROXIMATELY STANDING ABOUT RIGHT HERE (INDICATING).

Q AND HOW FAR DO YOU THINK YOU WERE FROM THE TRUCK WHEN YOU HEARD THE SHOT?

A MAYBE, I BELIEVE, ABOUT SIX, SEVEN FEET.

Q CAN YOU POINT TO SOMETHING IN THIS COURTROOM SO THAT THE LADIES AND GENTLEMEN OF THE JURY CAN VISUALIZE HOW FAR YOU WERE FROM THE TRUCK WHEN YOU HEARD THAT SHOOT?

A MAYBE TO THE -- FROM ME TO THE TRUCK WAS MAYBE AT THE THIRD CHAIR FROM THE FRONT.

Q APPROXIMATELY HERE?

A NO. LIKE MAYBE THE NEXT CHAIR.

THE COURT: APPROXIMATELY NINE FEET.

Q BY MR. GUTIERREZ: NOW, YOU POINTED ON THE DIAGRAM OF PEOPLE'S 1 TO THE RIGHT OF THE PHOTOGRAPH; IS THAT CORRECT?

A YES.

[596] Q WOULD IT HAVE BEEN TO THE RIGHT OF THE TIRE OR RIGHT OF THE REAR OF THE CAR?

A YOU MEAN --

Q TO THE RIGHT OF THE PASSENGER SIDE OF THE VEHICLE?

A YES.

Q OKAY. DID YOU EVER APPROACH THE DRIVER'S SIDE OF THE VEHICLE?

A NO, I DID NOT.

Q DID YOU EVER WITH YOUR HANDS TOUCH THE VEHICLE IN PEOPLE'S EXHIBIT 1-C? DID YOU EVER TOUCH THAT MAN'S PROPERTY, HIS CAR?

A NO, I DID NOT.

Q DID YOU EVER PUT YOUR FINGERS OR ANYTHING IN HIS CAR?

A NO, I DID NOT.

Q ON ANY PORTION OF HIS CAR?

A NO.

Q DID YOU EVER HAVE A CONVERSATION WITH A MAN BY THIS TRUCK BEFORE A SHOT WAS FIRED?

A NO.

Q DID YOU EVER DEMAND ANYTHING FROM HIM?

A NO, I DID NOT.

Q DID YOU EVER MAKE ANY MENACING GESTURES TO HIM OR ANYTHING OF THAT SORT?

A NO.

Q YOU CAN RESUME YOUR SEAT.

MICHAEL, DID YOU NEED A RIDE HOME THAT NIGHT?

[597] A NO, I DID NOT. I PLANNED TO SPEND THE NIGHT AT MANUEL'S HOUSE.

Q DID YOU WANT THAT MAN'S CAR?

A NO, I DID NOT.

Q DID YOU WANT THAT MAN'S MONEY?

A NO, I DID NOT.

Q DID YOU NEED THAT MAN'S MONEY?

A NO. I HAD A JOB AT THE TIME. I HAD MY OWN MONEY.

Q DID YOU WANT THAT MAN TO GET KILLED?

A NO, I DID NOT.

Q DID YOU EVER SUGGEST OR HELP ANYONE -- DID YOU EVER HELP SOMEBODY --

MS. NAKAKI: YOUR HONOR, OBJECT. LEADING QUESTIONS.

THE COURT: SUSTAINED.

MR. GUTIERREZ: MAY WE APPROACH?

THE COURT: YES, YOU MAY.

(THE FOLLOWING PROCEEDINGS WERE HELD AT SIDEBAR.)

MR. GUTIERREZ: CAN I ASK HIM IF HE HELPED MR. SOTO IN ANY WAY TO GO OVER THERE?

THE COURT: NOT UNLESS HE'S VOLUNTEERING THE INFORMATION. THE NATURE OF YOUR QUESTION SUGGESTS THE ANSWER.

MR. GUTIERREZ: I'M SORRY. DIRECT IS NOT MY -- CAN I ASK HIM IF HE EVER SAID ANYTHING TO CAUSE --

[598] THE COURT: YOU CAN ASK HIM WHAT, IF ANYTHING, HE SAID.

MR. GUTIERREZ: CAN I ASK HIM IF HE SAID ANYTHING TO PAUL TO GO THERE?

THE COURT: NO. THAT SUGGESTS THE ANSWER.

MR. GUTIERREZ: OKAY.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT IN THE PRESENCE OF THE JURY.)

Q BY MR. GUTIERREZ: ONE LAST QUESTION, MICHAEL -- EXCUSE ME -- MR. ALVARADO. WAS IT EVER IN ANY WAY YOUR INTENTION FOR THAT INCIDENT TO OCCUR THAT NIGHT?

A NO, IT WASN'T. I NEVER HAD ANY INTENTION.

MR. GUTIERREZ: THANK YOU, MR. ALVARADO.

THE COURT: ALL RIGHT.

MR. BERNSTEIN: NO QUESTIONS.

THE COURT: MS. NAKAKI.

+CROSS-EXAMINATION

BY MS. NAKAKI:

Q GOOD MORNING, MR. ALVARADO.

A MORNING.

Q WE HAVE NEVER SPOKEN BEFORE?

A NO, WE HAVEN'T.

Q YOUR ATTORNEY ASKED YOU A LITTLE ABOUT AN INTERVIEW THAT YOU HAD WITH DETECTIVE COMSTOCK. THIS IS THE WOMAN SITTING HERE IN COURT TODAY?

[599] A YES.

Q AT THAT INTERVIEW, IT WAS JUST YOU AND HER, CORRECT?

A YES.

Q IT WAS IN AN INTERVIEW ROOM?

A YES, IT WAS.

Q AT NO TIME WERE ANY WEAPONS POINTED AT YOU, ANYTHING OF THAT SORT?

A NO.

Q THIS WAS BASICALLY A LOW-KEY CONVERSATION, CORRECT?

A YES, IT WAS.

Q SHE WOULD ASK YOU SOME QUESTIONS, CORRECT?

A YES.

Q AND YOU WOULD ANSWER THOSE QUESTIONS, CORRECT?

A YES.

Q IN NO WAY WERE YOU THREATENED BY DETECTIVE COMSTOCK?

A NO.

Q IN TERMS OF ANY THREAT OF PHYSICAL VIOLENCE, THAT TYPE OF THING?

A NO.

Q SO IT WAS A PRETTY FRIENDLY CONVERSATION; IS THAT FAIR TO SAY?

A YES.

Q AND THERE WAS NO ONE ELSE PRESENT IN TERMS OF OTHER LAW ENFORCEMENT, UNIFORMED OFFICERS INSIDE THAT INTERVIEW ROOM?

[600] A NO, THERE WASN'T.

Q I THINK, AS STATED BEFORE, IT WAS ALL VOLUNTARY ON YOUR PART?

A YES.

Q AT NO TIME DID YOU FEEL COERCED?

A I DON'T UNDERSTAND THAT WORD.

Q IN OTHER WORDS, YOU WEREN'T THREATENED?

A RIGHT.

Q IT WAS A FRIENDLY CONVERSATION?

A YES.

A YES.

Q COERCED, FORCED -- DID YOU FEEL COERCED OR THREATENED IN ANY WAY?

A NO, I DID NOT.

Q IN OTHER WORDS, IT WAS SORT OF A FREE FLOW BETWEEN YOURSELF AND DETECTIVE COMSTOCK?

A YES.

Q THERE WAS MENTION OF AN INDIVIDUAL BY THE NAME OF MANUEL RIVERA. YOU KNOW MANUEL, CORRECT?

A YES.

Q HE'S A FRIEND OF YOURS, CORRECT?

A YES.

Q DURING THIS INTERVIEW YOU HAD WITH DETECTIVE COMSTOCK OCTOBER 24, 1995, THERE WERE SOME QUESTIONS ABOUT MR. RIVERA, CORRECT?

A YES, I BELIEVE THERE WAS.

Q HE, AT SOME POINT IN THE EVENING OF SEPTEMBER 22 AND 23 OF 1995, WAS PRESENT AT THE PARTY, CORRECT?

A YES.

[601] Q AND HE HAD ABSOLUTELY NOTHING TO DO WITH THE INCIDENT THAT OCCURRED AT THE

SHOPPING CENTER THAT YOU SPOKE ABOUT ON SEPTEMBER 23, 1995?

A RIGHT.

Q IN FACT, YOU TOLD DETECTIVE COMSTOCK AT NO TIME WAS MANUEL EVER UP AT THE TRUCK?

A CORRECT.

Q NOW, YOU WERE ASKED ABOUT THE LAYOUT OF THE SHOPPING CENTER, AND YOU ARE FAMILIAR WITH IT. AND YOU WERE ASKED ABOUT, IN PARTICULAR, PEOPLE'S 1-B, CORRECT?

A YES.

Q AND AT ONE POINT YOU INDICATED -- AND I'M POINTING TO THE BUILDING THAT APPEARS TO BE ON THE MOST RIGHT-HAND PORTION OF THIS MALL AREA. YOU SAID THAT'S THE POLICE SERVICE CENTER?

A YES, IT IS.

Q YOU DID SEE A PATROL CAR OUT FRONT?

A YES, I DID.

Q AND THE MOTOR WAS RUNNING?

A YES.

Q YOU DON'T KNOW IF THE VEHICLE WAS ON ITS WAY OUT OR COMING IN?

A NO. I COULDN'T TELL.

Q YOU INDICATED -- AND I'M POINTING TO A SEPARATE BUILDING. IT'S APART FROM THIS MAIN MALL AREA. I THINK YOU STATED THIS WAS THE YOSHINOYA RESTAURANT; IS THAT CORRECT?

A YES.

[602] Q SO THE LOCATION OF WHERE THE DUMPSTER AND THIS TRUCK WOULD BE WOULD BE SOMEWHERE ON THIS SIDE -- AND I'M AGAIN POINTING BY THE YOSHINOYA RESTAURANT; IS THAT CORRECT?

A YES.

Q FROM WHAT YOU'RE TELLING US WHERE THE PATROL CAR WOULD HAVE BEEN AT THIS BUILDING AND WHERE THE YOSHINOYA RESTAURANT IS ON PEOPLE'S 1-B, THERE'S NO WAY A PATROL CAR COULD SEE WHAT IS GOING ON BY THE YOSHINOYA RESTAURANT; IS THAT CORRECT?

A YES.

Q IN OTHER WORDS, THERE'S NO STRAIGHT LINE OF VISION FOR THAT PATROL CAR TO SEE ANYTHING HAPPENING ON THAT SIDE WHERE THIS TRUCK AND DUMPSTER ARE, CORRECT?

A YES.

Q NOW, YOU WERE ASKED ABOUT SOME DRINKING THAT WENT ON ON SEPTEMBER 22 AND INTO SEPTEMBER 23 OF 1995, CORRECT?

A YES.

Q ON THAT EVENING YOU WERE NOT DRUNK, CORRECT?

A WELL, I WAS DRUNK, BUT I WAS NOT TO THE POINT WHERE I WAS STUMBLING OR I HAD SLURRED SPEECH.

Q I'LL GO BACK TO THE INTERVIEW YOU HAD WITH DETECTIVE COMSTOCK BACK IN OCTOBER. YOU DO REMEMBER BEING ASKED SOME QUESTIONS ABOUT DRINKING AND WHATNOT, CORRECT?

A YES.

Q AND DO YOU REMEMBER BEING ASKED, HOW MUCH DID YOU DRINK --

MS. NAKAKI: AND FOR THE RECORD, PAGE 228, LINE 11.

[603] Q "HOW MUCH DID YOU HAVE TO DRINK?

"A A LITTLE 40.

"Q A LITTLE 40?

"A A LITTLE 40 AND THEN SOME OF THE STRAWBERRY HILL.

"Q WERE YOU A LITTLE BUZZED?

"A A LITTLE BIT."

MR. GUTIERREZ: I WOULD ASK THAT IT GO ON TO --

THE COURT: YOU'LL HAVE THE OPPORTUNITY.

Q BY MS. NAKAKI: YOU SAID YOU WERE A LITTLE BIT BUZZED, CORRECT?

A YES.

Q AND BY THAT, YOU MEAN YOU WERE FEELING THE EFFECTS OF THE ALCOHOL, CORRECT?

A YES, I WAS.

Q HOWEVER, YOU STILL HAD YOUR WITS ABOUT YOU?

A PRETTY MUCH, YES.

Q YOU COULD WALK, CORRECT?

A YES.

Q YOU COULD TALK?

A YES.

Q YOU COULD CARRY ON A CONVERSATION, CORRECT?

A YES.

Q BECAUSE AT SOME POINT IN THAT EVENING YOU WERE WALKING BACK AND FORTH BETWEEN MANUEL'S HOUSE AND THE SHOPPING CENTER, CORRECT?

A YES.

Q SO WHEN YOU USED THE TERM "A LITTLE BUZZED," [604] YOU'RE SAYING YOU'RE STILL ABLE TO COMPREHEND THINGS, CORRECT?

A YES. I TOLD YOU THAT I WAS ABLE TO WALK, THAT I DID NOT HAVE SLURRED SPEECH.

Q YOU UNDERSTOOD WHAT PEOPLE WERE SAYING TO YOU?

A YES.

Q YOU COULD COMPREHEND THAT, CORRECT?

A YES.

Q AND THAT WAS YOUR STATE THAT EVENING, "A LITTLE BUZZED," CORRECT?

A YES.

Q NOW, YOU HAD ALSO MENTIONED AT SOME POINT THERE WAS THIS BACK AND FORTH TO THE PAY PHONES; IS THAT RIGHT?

A YES.

Q AND YOU WENT WITH MR. RIVERA, YOUR FRIEND?

A ONCE, I BELIEVE.

Q WAS THAT THE FIRST OR SECOND TIME?

A WELL, THE LAST TIME WHEN HE USED THE PHONE.

Q GETTING BACK TO YOUR INTERVIEW WITH DETECTIVE COMSTOCK, THERE WAS SOME DISCUSSION BETWEEN YOU AND THE DETECTIVE ABOUT WHAT HAPPENED OUT AT THE SHOPPING CENTER?

A YES.

Q IN FACT, A MAN WAS KILLED THAT NIGHT?

A YES.

Q AND YOU WERE AWARE OF THAT, CORRECT?

A YES.

[605] BY MS. NAKAKI: YOUR HONOR, I'LL BE APPROACHING THE WITNESS WITH PEOPLE'S 8, WHICH IS THE TAPE.

THE COURT: ALL RIGHT.

Q BY MS. NAKAKI: AND DURING YOUR INTERVIEW ON OCTOBER 24, 1995, WITH DETECTIVE COMSTOCK, YOU EXPLAINED TO HER YOUR RECOLLECTION, YOUR OBSERVATIONS OF WHAT HAPPENED THAT NIGHT WHEN A MAN WAS KILLED OUT THERE AT THE SHOPPING CENTER, CORRECT?

A YES.

Q FOR THE RECORD, YOU INDICATED THERE WAS SOMEONE, YOU WEREN'T SURE WHO IT WAS, THAT WAS ALSO AT THAT PARTY.

IS THIS PERSON IN THE COURTROOM TODAY?

A YES, THEY ARE.

Q POINT HIM OUT AND DESCRIBE WHAT HE'S WEARING IN THE COURTROOM TODAY.

A HE IS SEATED AT THE DEFENSE TABLE WEARING A BUTTON SHIRT, CHECKERED.

THE COURT: INDICATING MR. SOTO, FOR THE RECORD.

Q BY MS. NAKAKI: THE MAN YOU IDENTIFIED IN COURT, PAUL SOTO, HE WAS AT THE PARTY THAT NIGHT?

A YES.

Q AS A MATTER OF FACT, YOU KNEW HIS NAME WAS PAUL, CORRECT?

A NO, NOT AT THE NIGHT OF THE PARTY.

Q DO YOU REMEMBER HAVING A CONVERSATION WITH DETECTIVE COMSTOCK ABOUT THIS UNKNOWN MALE AND THEN YOU LATER VOLUNTEERED THE NAME TO BE PAUL?

[606] A YES. BECAUSE I HAD FOUND OUT FROM OTHER PEOPLE THAT THAT WAS HIS NAME.

Q INITIALLY, YOU TOLD DETECTIVE COMSTOCK YOU DID NOT KNOW THE PERSON'S NAME, THIS IS ON OCTOBER 24, 1995, AND HE WAS REFERRED TO AS THE UNKNOWN MALE, CORRECT?

A YES.

Q WITHOUT ANY INFORMATION BEING GIVEN TO YOU BY DETECTIVE COMSTOCK, YOU VOLUNTEERED THE NAME AS BEING PAUL, CORRECT?

A YES.

Q SO CONTRARY TO WHAT YOU INITIALLY TOLD DETECTIVE COMSTOCK ON OCTOBER 24, 1995,

YOU KNEW THE UNKNOWN MALE'S NAME WAS PAUL ON OCTOBER 24, 1995, CORRECT?

A YES.

Q IT WAS ONLY AFTER DETECTIVE COMSTOCK POINTED OUT TO YOU, "OH, BY THE WAY, YOU MENTIONED THE NAME PAUL," THAT YOU ADMITTED YOU KNEW THE UNKNOWN MALE'S NAME WAS PAUL, CORRECT?

A YES.

Q AS A MATTER OF FACT, YOU ALSO ADMITTED TO DETECTIVE COMSTOCK THAT CONTRARY TO JUST MEETING HIM AT THE PARTY, YOU ACTUALLY MET PAUL EARLIER THAT DAY, CORRECT?

A NO. I DON'T REMEMBER EVER MEETING HIM THAT DAY.

MS. NAKAKI: IF I MAY JUST HAVE A MOMENT, YOUR HONOR.

YOUR HONOR, I'LL BE APPROACHING THE WITNESS WITH PAGE 233, BEGINNING AT LINE 16.

Q WHAT I WOULD LIKE YOU TO DO IS GO AHEAD AND [607] READ PAGE 233, LINE 16 DOWN TO LINE 27.

A (WITNESS COMPLIES.)

MR. GUTIERREZ: I'M SORRY, COUNSEL. WHAT PAGE?

MS. NAKAKI: PAGE 233, BEGINNING AT LINE 16.

MR. BERNSTEIN: ENDING WHERE?

MS. NAKAKI: 27.

MR. BERNSTEIN: YOUR HONOR, I'LL HAVE AN OBJECTION.

THE COURT: BASED ON? I DON'T HAVE IT, SO --

MR. BERNSTEIN: MAY WE APPROACH? I WOULD LIKE TO MAKE A RECORD.

THE COURT: YES, YOU MAY.

(THE FOLLOWING PROCEEDINGS WERE HELD AT SIDEBAR.)

MR. BERNSTEIN: 13 TO 27?

MS. NAKAKI: LINE 16 TO 27.

THE COURT: BEFORE YOU TWO START, LET ME READ BECAUSE IT'S EXCISED ON MY VERSION.

MS. NAKAKI: LINE 16 THROUGH 27.

THE COURT: HOW CAN YOU GET THIS IN?

MS. NAKAKI: THE POINT THAT THE PEOPLE ARE ATTEMPTING TO MAKE IS ON DIRECT MR. ALVARADO CLAIMS THE FIRST TIME THAT HE EVER MET MR. SOTO WAS AT THE PARTY, CONTRARY TO WHAT HE STATED ON DIRECT. HE IS SAYING, NO, I ACTUALLY SEEN HIM EARLIER IN THE DAY AT THE PARK.

THE COURT: IF YOU CAN LIMIT IT TO THAT, THAT'S FINE. BUT NO REFERENCE TO ANY GANG.

[608] MS. NAKAKI: NO.

MR. GUTIERREZ: "I HAD KIND OF PUT TWO AND TWO TOGETHER WHEN WE WERE AT A PARK THAT DAY. THERE WAS HIM, ANOTHER GUY FROM RIVERA."

THE REAL PROBLEM IS THE GANG STUFF.

MS. NAKAKI: HAVE YOU ADVISED YOUR CLIENT -- HE WAS SITTING HERE IN COURT -- HOW NONE OF THAT IS SUPPOSED TO COME IN? DO YOU WANT TO CONFER WITH HIM BRIEFLY?

MR. GUTIERREZ: NO. YOU CAN LEAD HIM ON IT. HE'S NOT A SOPHISTICATED GUY.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT IN THE PRESENCE OF THE JURY.)

Q BY MS. NAKAKI: MR. ALVARADO, DID YOU HAVE A CHANCE TO READ LINE 16 THROUGH 27 OF THIS PAGE?

A YES, I DID.

Q AND AS A MATTER OF FACT, YOU DID TELL THE DETECTIVE THAT YOU HAD MET MR. PAUL SOTO EARLIER THAT DAY, CORRECT?

A I HAD NEVER MET HIM, BUT I SEEN HIM.

Q YOU HAD ACTUALLY SEEN HIM EARLIER IN THE DAY?

A YES.

Q THE PARTY WAS NOT THE FIRST TIME YOU HAD SEEN HIM?

A BUT I NEVER KNEW THAT WAS THE SAME MALE UNTIL I WAS TOLD AFTERWARDS.

MR. BERNSTEIN: OBJECT TO ANYTHING HE'S TOLD.

[609] THE COURT: OBJECTION IS PREMATURE.

MR. GUTIERREZ: I ASK HE BE PERMITTED TO A FULL RESPONSE.

THE COURT: GO ON FROM HERE.

Q BY MS. NAKAKI: NOW, DO YOU RECALL TELLING THE DETECTIVE THAT YOU PUT TWO AND TWO TOGETHER, THAT YOU HAD DETERMINED THAT YOU HAD ACTUALLY SEEN PAUL SOTO EARLIER THAT DAY AND NOT JUST AT THE PARTY? IS THAT WHAT YOU TOLD THE DETECTIVE?

A YES.

Q AND DURING YOUR INTERVIEW WITH DETECTIVE COMSTOCK, YOU EXPLAINED TO HER THE CIRCUMSTANCES OF THE KILLING OF THE MAN, MR. CASTANEDA, AT THE SHOPPING CENTER ON SEPTEMBER 23, 1995, CORRECT?

A YES.

Q AND AS A MATTER OF FACT, YOU TOLD HER THAT PAUL WAS GOING TO GO UP AND TRY TO JACK THE GUY, TAKE HIS TRUCK, CORRECT?

A YES. BUT THESE WERE FROM WHAT I WAS TOLD AFTERWARDS --

Q THAT'S NOT WHAT YOU TOLD --

A -- ABOUT WHAT HAD HAPPENED.

MS. NAKAKI: YOUR HONOR, IF I MAY, I'LL BE PLAYING PEOPLE'S 8.

THE COURT: WHAT PORTION?

MS. NAKAKI: BEGINNING PAGE 232.

MR. BERNSTEIN: YOUR HONOR, I'LL OBJECT. IT'S BEEN PLAYED ONCE.

[610] THE COURT: NOTED FOR THE RECORD.

(WHEREUPON A PORTION OF PEOPLE'S 8, AN AUDIO TAPE, WAS PLAYED.)

Q BY MS. NAKAKI: AT THAT POINT, YOU VOLUNTEERED THE NAME PAUL?

A YES.

Q BUT AT THE TIME OF THE INTERVIEW ON OCTOBER 24, 1995, YOU KNEW HIS NAME WAS PAUL?

A YES.

Q YOU TOLD THE DETECTIVE YOU DIDN'T KNOW WHAT HIS NAME WAS, CORRECT?

A YES.

Q AND AFTER SHE POINTED OUT TO YOU THAT YOU VOLUNTEERED THE NAME PAUL WAS WHEN YOU ADMITTED YOU DID KNOW WHAT THE UNKNOWN MALE'S NAME WAS, CORRECT?

A YES.

Q NOW, YOU ADMITTED ALSO -- YOU HEARD THE TAPE. IS THAT YOUR VOICE?

A YES, IT IS.

Q AND THAT WAS THE INTERVIEW THAT YOU HAD WITH DETECTIVE COMSTOCK, OR PART OF IT, ON OCTOBER 24, 1995?

A YES.

Q AND AT THAT TIME, YOU SAID THAT PAUL WANTED THE MAN'S TRUCK, CORRECT?

A YES.

Q YOU DIDN'T KNOW WHAT YOU WERE THINKING, BUT [611] YOU WENT OVER THERE. AND YOU HAD NO INTENTION OF HURTING HIM, BUT YOU WALKED OVER TO THE SIDE OF THE TRUCK ALSO, CORRECT?

A YES.

Q YOU WALKED OVER TO THE SIDE OF TRUCK BECAUSE YOU KNEW PAUL WAS GOING TO ROB AND TAKE THE MAN'S TRUCK, CORRECT?

A NO, I DID NOT.

Q YOU JUST WALKED UP TO THE TRUCK?

A I WASN'T WALKING TOWARDS THE TRUCK. I WAS WALKING BETWEEN THE TRUCK AND THE RESTAURANT. I HAD NO INTENTION OF GOING TO THE TRUCK.

Q YOU WERE STANDING ALONGSIDE THE TRUCK AND LOOKING THROUGH THE WINDOW, CORRECT?

A I DON'T REMEMBER LOOKING THROUGH THE WINDOW.

Q DO YOU RECALL SAYING IN THE INTERVIEW, "WHEN I GOT TO A CERTAIN PART OF THE TRUCK, I WAS LOOKING THROUGH THE WINDOW AND SO THEY WERE A LITTLE BIT BACK AND I COULDN'T REALLY SEE WHAT WAS GOING ON"?

A YES.

Q YOU SAID THAT TO DETECTIVE COMSTOCK, CORRECT?

A YES.

Q YOU WEREN'T JUST WALKING BY, YOU STOPPED TO SEE WHAT WAS GOING ON, WHAT PAUL SOTO WAS DOING TO THE MAN, CORRECT?

A NO. I NEVER STOPPED TO SEE WHAT HE WAS DOING TO THE MAN.

Q "I WAS LOOKING THROUGH THE WINDOW SO THEY WERE [612] A LITTLE BIT BACK AND I COULDN'T SEE WHAT WAS GOING ON," CORRECT?

A YEAH. I COULDN'T SEE WHAT WAS GOING ON. I DIDN'T KNOW IF HE WAS DOING ANYTHING TO THE MAN.

Q DO YOU REMEMBER TELLING DETECTIVE COMSTOCK, "I WAS STANDING ALONGSIDE OF THE TRUCK"?

YOU WEREN'T MOVING ALONGSIDE OF THE TRUCK; YOU WERE STANDING?

A YES. AT SOME POINT I HAD STOPPED.

Q RIGHT. BECAUSE YOU KNEW PAUL SOTO WAS GOING TO ROB THAT MAN, CORRECT?

A NO.

Q YOU JUST HAPPENED TO STOP, IS THAT WHAT YOU'RE TELLING US?

A YES. I NEVER KNEW HE WAS GOING TO ROB THE MAN.

Q I'LL BACK UP. WHAT YOU'RE TELLING US IS YOU JUST HAPPENED TO WALK OVER TOWARDS THIS TRUCK AND PAUL SOTO HAPPENED TO BE WALKING OVER TOWARDS THIS TRUCK AND YOU JUST HAPPENED TO STOP FOR NO REASON. IS THAT WHAT YOU'RE TELLING US?

A WELL, I HAD STOPPED. I HAD NO INTENTION -- I NEVER KNEW HE WAS GOING TO ROB THE MAN OR THAT ANYTHING WAS GOING TO HAPPEN.

MS. NAKAKI: MORE TO STRIKE. NONRESPONSIVE TO THE QUESTION.

THE COURT: OVERRULED. DENIED.

Q BY MS. NAKAKI: LET ME TRY TO ASK IT ANOTHER [613] WAY. YOU'RE TELLING US RIGHT NOW THAT YOU AND MR. SOTO JUST HAPPENED TO BE WALKING TOWARDS THE TRUCK AT THE SAME TIME, CORRECT?

A YES.

Q COINCIDENTALLY, PAUL SOTO IS WALKING TOWARD THE TRUCK AND YOU'RE WALKING TOWARD THE TRUCK, CORRECT?

A YES.

Q AND FOR SOME REASON, YOU JUST HAPPENED TO STAND AND STOP BY THE TRUCK, CORRECT?

A YES. I HAD STOPPED.

Q JUST OUT OF A COINCIDENCE, YOU HAPPENED TO LOOK OVER AND SEE A MAN GETTING SHOT IN THE CHEST?

A NO. I NEVER SAW ANY OF THAT. I EVEN SAY IN MY STATEMENT I NEVER SAW THE SHOT OR SOMEBODY BEING SHOT.

Q DO YOU RECALL SAYING, "I DIDN'T EVEN KNOW IF HE DID THAT. AND THEN ALL I HEARD WAS THE ONE SHOT, AND THEN I SAW THE MAN COME TO THE CAR AFTER HE WAS SHOT IN THE CHEST".

YOU SAW THE MAN WAS SHOT IN THE CHEST, CORRECT?

A I COULDN'T SEE THAT HE WAS SHOT IN THE CHEST.

Q "HE CAME TO THE CAR AND HIT THE CAR."

YOU SAW THAT, DIDN'T YOU?

A YES. I SAW HIM GO TO THE CAR.

Q AND YOU SAW THAT HE WAS SHOT IN THE CHEST?

A NO. I NEVER COULD SEE THAT HE WAS SHOT IN THE CHEST.

Q YOU JUST SAW THE MAN COME TO THE CAR?

[614] A YES.

Q YOU DIDN'T SEE IF THE MAN WAS INJURED?

A WELL, I SAW HE MUST HAVE BEEN INJURED BECAUSE HE HAD KIND OF LIKE FALLEN ON THE TRUCK.

Q AS A MATTER OF FACT, YOU HEARD THE MAN SCREAMING, DIDN'T YOU?

A I HEARD SOMETHING THAT MIGHT HAVE BEEN A SCREAM.

Q YOU HEARD THE MAN SCREAMING BEFORE YOU HEARD THE GUNSHOT, CORRECT?

A NO. I DON'T BELIEVE I HEARD THE MAN SCREAMING BEFORE THE GUNSHOT.

MS. NAKAKI: YOUR HONOR, IF I MAY CONTINUE WITH PEOPLE'S 8?

THE COURT: WHY DON'T WE GO AHEAD AND BREAK? SEE IF YOU CAN LIMIT THE NUMBER OF

TIMES YOU'RE GOING TO BE REFERRING TO THE TAPE. CUE IT UP SO WE ARE READY TO GO.

LADIES AND GENTLEMEN, WE WILL GO AHEAD AND BREAK. WE WILL RECONVENE AT 1:30. REMEMBER MY ADMONITIONS TO YOU IN THE MEANTIME.

(AT 11:50 P.M. THE JURY WAS RELEASED FOR LUNCH UNTIL 1:30 P.M.)

[615]

NORWALK, CALIFORNIA; WEDNESDAY,

MARCH 12, 1997

P.M. SESSION

DEPARTMENT SE-E HON. PHILIP H. HICKOK, JUDGE

APPEARANCES: (AS HERETOFORE NOTED.)

(CHRISTIE SCHIZAS, OFFICIAL REPORTER.)

- - -

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT IN THE PRESENCE OF THE JURY.)

THE COURT: BACK ON THE RECORD MS. NAKAKI.

MS. NAKAKI: THANK YOU, YOUR HONOR.

+CROSS EXAMINATION (CONTINUED)

BY MS. NAKAKI:

Q NOW, MR. ALVARADO, YOU HAD MENTIONED -- DURING YOUR INTERVIEW ON OCTOBER 24, 1995, WITH DETECTIVE COMSTOCK, YOU HAD TOLD HER THINGS THAT WERE TOLD TO YOU, CORRECT?

A YES.

MS. NAKAKI: YOUR HONOR, I'M GOING TO APPROACH AND -- THERE'S PEOPLE'S 8 -- AND I'M GOING TO PLAY THE RECORDING. AND FOR COUNSEL'S BENEFIT, IT'S BEGINNING PAGE 237.

(WHEREUPON A PORTION OF PEOPLE'S 8, AN AUDIO TAPE, WAS PLAYED.)

Q BY MS. NAKAKI: NOW, MR. ALVARADO, THAT'S YOUR VOICE ON THE TAPE, CORRECT?

[616] A YES, IT IS.

Q THAT WAS PART OF THE INTERVIEW YOU HAD WITH DETECTIVE COMSTOCK ON OCTOBER 24, 1995, CORRECT?

A YES, IT WAS.

Q IN THAT PORTION OF THE INTERVIEW, YOU TOLD DETECTIVE COMSTOCK THAT YOU WERE STANDING AROUND WITH MANUEL AND PAUL, CORRECT?

A YES.

Q AND, IN FACT, YOU WERE STANDING AROUND WITH MANUEL AND PAUL AT THAT POINT, CORRECT?

A I BELIEVE THEY WERE NEAR AROUND THE SAME AREA.

Q YOU SAY "NEAR AROUND THE SAME AREA." WHAT AREA ARE YOU TALKING ABOUT?

A BY THE SIDE WALL OF THE MARKET BY THE PLANTER.

Q YOU ARE TALKING ABOUT JACK'S MARKET, CORRECT?

A YES.

MS. NAKAKI: YOUR HONOR, I'LL BE APPROACHING THE WITNESS WITH THE PHOTOGRAPH MARKED DEFENSE "D".

THE COURT: VERY WELL.

Q BY MS. NAKAKI: CAN YOU SEE DEFENSE "D"?

A YES, I CAN.

Q DO YOU SEE WHERE THIS ORANGE CIRCLE IS ON DEFENSE "D"?

A YES.

Q WAS THAT WHERE YOU, PAUL, AND MANUEL WERE STANDING?

A YES. AROUND THAT AREA.

Q WHEN YOU SAY IN THAT GENERAL AREA, WERE YOU [617] ALL TOGETHER?

A WELL, I NEVER REALLY PAID ATTENTION TO WHERE EACH OF THEM WERE SITTING OR STANDING, BUT I BELIEVE THEY WERE AROUND BY THAT PLANTER.

Q DO YOU REMEMBER JUST LISTENING TO THE TAPE AND HEARING THE QUESTION:

"OKAY. AND THEN MANUEL GETS OFF THE PHONE, AND YOU GUYS ARE ALL SORT OF STANDING AROUND TALKING?

"A YEAH, TALKING AND JUST --

EVERYBODY'S JUST TRYING TO THINK OF SOMETHING TO DO AND HOW TO GET HOME."

DO YOU REMEMBER TELLING THAT TO DETECTIVE COMSTOCK?

A YES, I DO.

Q THERE WAS A CONVERSATION GOING ON BETWEEN YOU, PAUL, AND MANUEL, CORRECT?

A NO. IT NEVER SAYS BETWEEN ME AND PAUL. I WAS TALKING TO VALERIE AT THE TIME, I BELIEVE.

Q SO YOU WERE TALKING WITH THE GROUP?

A NO. I LIMITED REALLY MY CONVERSATION WITH VALERIE, BUT THERE WERE -- PEOPLE IN THE GROUP WERE TALKING TO EACH OTHER OR SO FORTH LIKE THAT.

Q SO YOU WERE PART OF THE GROUP AT THIS POINT, CORRECT?

A I BELIEVE SO, YES.

Q AND THEN DO YOU REMEMBER TELLING ALSO DETECTIVE COMSTOCK THAT IT WAS ABOUT FIVE OR TEN MINUTES [618] AFTER MANUEL IS OFF THE PHONE THAT PAUL MAKES THE SUGGESTION ABOUT TAKING THE TRUCK?

A THIS IS WHAT I HAD HEARD FROM OTHER PEOPLE, THAT THE SUGGESTION WAS AROUND THAT TIME BECAUSE --

MR. BERNSTEIN: OBJECT AS HEARSAY, YOUR HONOR.

THE COURT: THE SECOND PART OF THAT STATEMENT IS HEARSAY. IT WILL GO OUT. THE FIRST PART STAYS IN.

Q BY MS. NAKAKI: DO YOU REMEMBER DURING YOUR INTERVIEW WITH DETECTIVE COMSTOCK AND YOU HEARD THE INTERVIEW, THIS PORTION OF IT:

"Q HOW LONG AFTER MANUEL'S OFF THE PHONE DOES PAUL MAKE THE SUGGESTION ABOUT TAKING THE TRUCK?

A MAYBE FIVE, TEN MINUTES."

A I DON'T UNDERSTAND YOUR QUESTION.

Q DID YOU SAY THAT TO DETECTIVE COMSTOCK? THAT'S THE QUESTION.

A YES.

Q NOW YOU'RE SAYING YOU HEARD THIS FROM OTHER PEOPLE?

A LATER AFTER ALL THIS HAD HAPPENED AND ME AND MANUEL HAD GONE TO HIS ROOM FOR THE NIGHT.

MR.BERNSTEIN: OBJECTION, YOUR HONOR. HE'S RECITING HEARSAY AT THIS POINT.

THE COURT: NO. OVERRULED.

HOWEVER, MR. ALVARADO, LET ME CAUTION YOU NOT TO TELL US WHAT SOMEBODY TOLD YOU. YOU CAN SAY YOU HAD A CONVERSATION WITH SOMEBODY, BUT YOU CAN'T TELL US THE [619] CONTENT OF THE CONVERSATION.

MR. BERNSTEIN: EXCUSE ME, YOUR HONOR. BUT, IN EFFECT, IT'S ALREADY -- HE'S IDENTIFIED THE CONTENTS AS BEING ATTRIBUTED TO HIM AS BEING HEARSAY.

THE COURT: OVERRULED.

MR. BERNSTEIN: THANK YOU.

Q BY MS.NAKAKI: YOU DO RECALL THAT MANUEL HAD BEEN OFF THE PHONE FOR ABOUT FIVE MINUTES WHEN PAUL MADE SOME SORT OF STATEMENT? YOU REMEMBER THAT, CORRECT?

A I THINK SO. I'M NOT REALLY SURE HOW LONG HE HAD BEEN OFF THE PHONE OR WHERE EXACTLY HE WAS AT.

Q DO YOU RECALL -- AND I'M REFERRING TO PAGE 239, AND IT'S LINE 7 THROUGH 9:

"Q OKAY. OKAY. SO AFTER MANUEL'S OFF THE PHONE FOR ABUT FIVE MINUTES?

"A ABOUT FIVE, TEN MINUTES."

YOU DID TELL DETECTIVE COMSTOCK THAT?

A YES.

Q PAUL MADE A STATEMENT SOMETIME AFTER MANUEL IS OFF THE PHONE, CORRECT?

A THAT'S WHAT I WAS TOLD, YES. I NEVER HEARD IT MYSELF.

Q YOU ARE SAYING MANUEL IS TELLING YOU THIS?

A YES.

MS. NAKAKI: IF I MAY APPROACH. IT'S GOING TO BE BEGINNING PAGE 239, BEGINNING LINE 10.

Q AND MR. ALVARADO, WHY DON'T YOU GO AHEAD AND LISTEN TO THIS.

[620] (WHEREUPON A PORTION OF PEOPLE'S 8, AN AUDIO TAPE, WAS PLAYED.)

Q BY MS. NAKAKI: AGAIN, MR. ALVARADO, THAT WAS YOUR VOICE ON THAT TAPE, CORRECT?

A YES, IT WAS.

Q AND THAT WAS PART OF THE SAME INTERVIEW WITH DETECTIVE COMSTOCK ON OCTOBER 24, 1995, CORRECT?

A YES.

Q NOW, IN THAT PORTION YOU WERE ASKED SPECIFICALLY WHAT, IF YOU REMEMBER, APPROXIMATELY WERE PAUL'S WORDS, CORRECT?

A YES.

Q AND YOUR ANSWER WAS:

"A UM, SO DO YOU WANT TO GO GET A CAR OR DO YOU WANT -- DO YOU WANT TO FIND A RIDE HOME OR --"

YOU SAD THAT TO DETECTIVE COMSTOCK, CORRECT?

A YES, I DID.

Q THAT'S WHAT YOU HEARD, CORRECT?

A THAT'S WHAT I HEARD FROM SOMEONE ELSE.

WHEN -- AT THE TIME WHEN I TOLD DETECTIVE COMSTOCK THIS, IT WAS THINGS --

MS. NAKAKI: YOUR HONOR, I BELIEVE HE'S ANSWERED THE QUESTION.

Q WHO TOLD YOU THIS?

A MANUEL.

[621] Q NOW, YOU WERE ASKED:

"Q AND WAS HE SAYING IT TO SOMEONE IN PARTICULAR?

"A WELL, HE WAS SAYING THAT TO -- WHEN HE WAS SAYING IT, HE WAS SAYING IT OUT LOUD AND THE GROUP RIGHT THERE."

DID YOU TELL DETECTIVE COMSTOCK THAT?

A YES.

Q YOU WERE PART OF THAT GROUP RIGHT THERE, CORRECT?

A YES.

Q AND YOU STATED HE WAS SAYING IT OUT LOUD, CORRECT?

A YES.

Q SO HE WAS ADDRESSING THE GROUP, CORRECT?

A I ASSUME HE WAS.

Q AND THEN WERE YOU ASKED THE QUESTION:

"SO HE DIDN'T SAY --

"A NO. HE --

"Q -- 'DESMOND,' OR HE DIDN'T ADDRESS IT TO ANYBODY, JUST THE GROUP?

"A NO. HE SAID IT TO THE -- YEAH, TO THE GROUP SPEAKING OUT LOUD."

YOU WERE STILL PART OF THAT GROUP, CORRECT?

A YES.

Q AND YOU'RE TELLING US YOU DIDN'T HEAR ANYTHING?

A NO, BECAUSE I WAS BUSY IN A CONVERSATION WITH [622] VALERIE.

Q AND DO YOU RECALL TELLING DETECTIVE COMSTOCK THAT PAUL SOTO ASKED, "WHO IS GOING TO GO WITH ME, WHO IS GOING TO GO AND WATCH OUT, SOMETHING LIKE THAT"?

"AND SO I WENT, AND THEN THAT'S WHEN I WENT ON THE OTHER SIDE AND HE WENT TO THE DRIVER."

A I JUST WENT -- I HAD NO PURPOSE TO GO -- TO GO WATCH OUT OR GO AND HELP, ANYTHING LIKE THAT.

MS. NAKAKI: YOUR HONOR, I'LL READ FROM PAGE 239, BEGINNING LINE 23:

"Q AND THEN WHAT WAS SAID?

"A UM, AND EVERY -- AND THEN I DON'T REMEMBER ANYBODY'S ANSWERS, OR I DON'T REMEMBER ANYBODY ANSWERING. LIKE, UH, IF

I REMEMBER CORRECTLY, EVERYBODY JUST STOOD LIKE QUIET, LIKE -- OH, WELL. UH, I DON'T KNOW. UM, AND THEN WE -- AND THEN, UM, HE HAD GONE WITHIN -- UH, HE NEVER ASKED -- HE NEVER, LIKE, REALLY ASKED ME. JUST, YOU KNOW, 'OH, YOU WANT TO GO?' AND THEN, UM, HE'S ALL, 'WELL, ARE YOU GOING TO GO WITH ME, OR WHO IS GOING TO GO WITH ME? WHO IS GOING TO GO AND WATCH OUT AND SOMETHING LIKE THAT.' SO I WENT. AND THEN THAT'S WHEN I WENT ON THE OTHER SIDE AND HE WENT TO THE DRIVER."

DID YOU TELL THAT TO DETECTIVE COMSTOCK?

A. YES, I DID.

[623] Q SO YOU TOLD DETECTIVE COMSTOCK THAT PAUL SOTO SAID, "WHO IS GOING TO GO WITH ME? WHO IS GOING TO GO AND WATCH OUT AND

SOMETHING LIKE THAT? SO I WENT. AND THEN THAT'S WHEN I WENT ON THE OTHER SIDE AND HE WENT TO THE DRIVER"?

A NOT THAT HE TOLD ME, BUT THAT -- IT'S JUST WHAT I HAD HEARD THAT WAS SAID OUT IN THE GROUP.

Q AND IT WAS JUST A COINCIDENCE THAT YOU HAPPENED TO WALK OVER IN THE DIRECTION OF THE TRUCK AT THE SAME TIME THAT PAUL SOTO DID?

A I HAD BEEN WANDERING AROUND THE WHOLE NIGHT WHEN WE HAD WALKED UP THERE. I EVEN SAID IN THE REPORT THAT WE WEREN'T WALKING TOGETHER.

Q I'LL BACK UP A LITTLE BIT. IF I RECALL, JUST THE PRIOR QUESTIONING YOU SAID YOU WERE PART OF THE GROUP, CORRECT?

A YES.

Q WHEN PAUL WAS TALKING, CORRECT?

A (WITNESS INDICATES BY NODDING HEAD UP AND DOWN.)

Q IS THAT A "YES"?

A YES.

Q AND THEN WHILE WERE YOU PART OF THIS GROUP, PAUL WALKED OVER TOWARDS THE TRUCK, CORRECT?

A YES.

Q AND YOU JUST HAPPENED TO COINCIDENTALLY WALK OVER AT THE SAME TIME, CORRECT?

A YES.

[624] Q NOW, YOU ALSO TOLD DETECTIVE COMSTOCK THAT PAUL SOTO DIRECTED THE GROUP TO A PARTICULAR VEHICLE THAT HE WAS TALKING ABOUT, CORRECT?

A YES.

Q HOW DID HE DO THAT?

A WELL, I GUESS HE WAS JUST LOOKING UP IN THAT DIRECTION.

Q YOU SAW HIM LOOKING IN THAT DIRECTION, CORRECT?

A WELL, I SAW HIM LOOKING OUT STRAIGHT AHEAD.

Q DO YOU REMEMBER THIS? AND IT'S PAGE 240, BEGINNING LINE 6:

"Q WHEN HE MADE THE STATEMENT ABOUT SOMETHING TO THE EFFECT OF, 'UH, YOU WANT TO GO GET A CAR, YOU WANT A RIDE HOME?' WAS HE INDICATING IN SOME MANNER THE PICKUP TRUCK?

"A YES, BECAUSE THE -- THE MAN IN THE -- THE PICKUP TRUCK WAS OUT OF THE CAR AND SORT OF INTO THE DUMPSTER, GETTING OFF THE -- THE CARDBOARDS."

DO YOU REMEMBER TELLING DETECTIVE COMSTOCK THAT?

A YES.

Q YOU WERE STILL PART OF THAT GROUP OF PEOPLE BY THE PLANTER, CORRECT?

A YES.

Q AND YOU SAW THIS MAN GETTING CARDBOARDS OUT OF THE DUMPSTER, CORRECT?

[625] A YES, I DID.

Q SO YOU'RE STILL PART OF THIS GROUP HERE, CORRECT?

A YES.

Q AND PAUL WAS LOOKING IN THE DIRECTION OF THE PICKUP TRUCK; IS THAT CORRECT?

A YES. WELL, IT APPEARED THAT HE WAS LOOKING OUT IN THAT DIRECTION BECAUSE MY BACK WAS TO THE PICKUP TRUCK, TO THE DUMPSTER, WHEN I WAS TALKING TO VALERIE.

Q YOU'RE STILL PART OF THIS GROUP?

A YES.

Q NOW, YOU SAY YOU'RE TALKING TO VALERIE. WHERE IS VALERIE IN THIS GROUP OF PEOPLE?

A SHE'S ON THE SIDEWALK, BUT WE WERE -- EVERYBODY WAS BY THE PLANTER, MORE BY THE PLANTER. WE WERE MAYBE IN THE MIDDLE OF THE SIDEWALK, CLOSER TO THE EDGE.

Q HOW FAR FROM THE GROUP -- WHEN YOU TALK ABOUT A GROUP -- WERE YOU FROM WHERE YOU'RE SITTING TO WHERE I AM WHEN PAUL WAS MAKING THE STA1EMENT? I'M BEING PAUL; YOU YOURSELF.

A MAYBE A LITTLE CLOSER. MAYBE TO THE FRONT OF THIS DESK. FROM WHERE YOU WERE -- FROM WHERE YOU WERE AT TO THE FRONT OF THIS DESK.

Q FROM THIS POINT TO THE FRONT OF COUNSEL TABLE.

THE COURT: APPROXIMATELY SIX FEET.

Q BY MS. NAKAKI: SO PAUL AND YOU WERE ABOUT SIX FEET APART; IS THAT CORRECT?

A YES.

[626] Q NOW, THIS TRUCK WAS STOPPED FOR APPROXIMATELY HOW LONG BEFORE YOU AND PAUL HAPPENED TO BOTH GO TOWARDS THE TRUCK?

A I CAN'T REALLY SAY. I NEVER SEEN WHEN IT FIRST PULLED UP, SO I DON'T KNOW HOW LONG IT WAS THERE BEFORE.

Q NOW, MR. SOTO HAD A GUN THAT NIGHT, CORRECT?

A YES.

Q AND THAT'S THE PERSON YOU IDENTIFIED IN COURT TODAY, CORRECT?

A YES.

Q AND YOU SAW THAT GUN BEFORE MR. SOTO WALKED TOWARDS THE TRUCK, CORRECT?

A YES.

Q HE SHOWED IT TO YOU, CORRECT?

A WELL, HE HAD FLASHED IT. AND I WAS LOOKING IN A DIFFERENT DIRECTION AND FIGURED OUT LATER THAT IT WAS A GUN.

Q HE SHOWED IT TO YOU, CORRECT?

A NO. HE WASN'T SHOWING IT TO ME. IT SEEMED LIKE HE HAD JUST FLASHED IT, MAYBE SHOWED IT TO THE GROUP SOMETHING.

MS. NAKAKI: YOUR HONOR, IF I MAY JUST CONTINUE WITH THE TAPE. THERE'S A PORTION THAT MAY NOT PERTAIN TO THIS, BUT IF WE CAN PLAY IT THROUGH.

(WHEREUPON A PORTION OF PEOPLE'S 8, AN AUDIO TAPE, WAS PLAYED.)

[627] Q BY MS. NAKAKI: MR. ALVARADO, YOU SAID YOU NEVER HEARD PAUL MAKE ANY SORT OF THE STATEMENT, CORRECT?

A CORRECT.

Q BUT DETECTIVE COMSTOCK DID ASK YOU HOW LONG THE TRUCK HAD BEEN STOPPED IN FRONT OF THE DUMPSTER WHEN PAUL SAID THIS. DO YOU REMEMBER BEING ASKED THAT?

A YES.

Q AND YOU ANSWERED, "A MINUTE OR TWO"?

A YES.

Q SO SOMEONE TOLD YOU THAT THE TRUCK HAD BEEN STOPPED IN FRONT OF THE DUMPSTER FOR A MINUTE OR TWO BEFORE PAUL MADE THE STATEMENT?

A NO I ASSUMED MYSELF IT HAD BEEN THERE FOR ABOUT THAT LONG.

Q NOW, YOU INDICATED THAT YOU HAD SEEN THE GUN, CORRECT?

A YES.

Q CAN YOU DESCRIBE THE GUN FOR US?

A WELL, WHEN I SAW THE GUN IT WAS AFTER EVERYTHING HAD TAKEN PLACE. AND I BELIEVE IT WAS BLACK. SEEMED LIKE A REAL BIG GUN, BLACK, AND I THINK IT HAD LIKE A DARK-COLOR HANDLE, A BROWN HANDLE.

Q YOU HAD SEEN IT AT THE SHOPPING CENTER ALSO, THOUGH?

A NOT AT THE SHOPPING CENTER. I'M TALKING -- WHEN I HAD SEEN IT, IT WAS AFTER ALL THIS.

Q DO YOU RECALL THIS? AND THIS IS ON PAGE 241, [628] LINE 6:

"Q OKAY. AT WHAT POINT DID YOU SEE PAUL WITH THE GUN?

"A UM, WHEN WE HAD -- WHEN HE WAS SITTING DOWN AT THE VERY LAST MINUTE, BEFORE HE APPROACHED THE TRUCK, HE HAD JUST WENT LIKE THAT, AND HE HAD LIKE PULLED IT OUT OF HIS POCK -- I DON'T KNOW IF HE PULLED IT OUT OF HIS POCKET OR HIS PANTS -- AND PULLED IT LIKE THAT AND SHOWED IT AND PUT IT BACK. BUT THEN HE HAD PUT IT IN HIS POCKET."

DO YOU REMEMBER TELLING DETECTIVE COMSTOCK THAT ON OCTOBER 24, 1995?

A YES.

Q YOU SAW PAUL WITH THE GUN BEFORE HE APPROACHED THE TRUCK AT THE SHOPPING CENTER, CORRECT?

A NO, NOT BEFORE.

Q YOU TOLD DETECTIVE COMSTOCK THIS, CORRECT?

A YES, I DID.

Q AND YOU ALSO TOLD DETECTIVE COMSTOCK THAT "HE WAS SITTING BACK AND I WAS LIKE IN FRONT OF HIM AND SO HE DID IT WITH HIS LEFT HAND, I BELIEVE."

YOU TOLD DETECTIVE COMSTOCK THAT, CORRECT?

A YES.

Q SO YOU SAW PAUL WITH THE GUN IN HIS LEFT HAND?

A I HAD SEEN SOMETHING IN HIS LEFT HAND. AND LATER, AFTER, I REALIZED WHEN I HAD TIME TO THINK ABOUT IT, THAT THERE WAS A SHOT, SO I ASSUMED THAT THAT IS PROBABLY [629] THE GUN THAT HE HAD FLASHED.

Q NOW, YOU HAD STATED PREVIOUSLY -- YOU TOLD DETECTIVE COMSTOCK THAT YOU SAW HIM, "HE HAD LIKE PULLED IT OUT OF HIS POCK -- I DON'T

KNOW IF HE PULLED IT OUT OF HIS POCKET OR HIS PANTS -- AND PULLED IT LIKE THAT AND SHOWED IT AND PUT IT BACK."

HE SHOWED SOMETHING TO YOU, CORRECT?

A YES.

Q HE SHOWED YOU THE GUN, CORRECT?

A WELL, NOW I REALIZE THAT IT WAS A GUN.

Q IT WAS VERY LARGE?

A IT MUST HAVE BEEN. I NEVER SAW CLEARLY IN HIS HAND WHAT IT WAS.

MS. NAKAKI: AT THIS POINT, I'M GOING TO APPROACH DEFENSE "D".

Q WE ARE TALKING ABOUT THIS AREA RIGHT HERE, CORRECT?

A YES.

Q AND THAT'S WHERE HE PULLED IT OUT OF, EITHER HIS POCKET OR PANTS, CORRECT?

A YES.

Q AND THERE'S LIGHTING COMING FROM THE DONUT AREA, RIGHT?

A YES.

Q IT'S LIT THERE, CORRECT?

A (WITNESS NODS.)

Q YES?

A YES.

[630] Q YOU DESCRIBED THE GUN AS A REVOLVER; IS THAT CORRECT?

A YES, I BELIEVE SO.

Q AND DO YOU RECALL WHAT CALIBER?

A NO.

Q DO YOU RECALL WHAT COLOR THE GRIPS WERE?

A I BELIEVE IT HAD LIKE A TAN OR DARK -- LIKE A BROWN.

Q DO YOU RECALL, WAS IT A SHORT BARREL? LONG BARREL?

A I CAN'T RECALL. IT SEEMED LIKE IT WAS A BIG GUN.

Q NOW, WHEN PAUL HAD PULLED SOMETHING EITHER OUT OF HIS POCKET OR HIS WAIST AREA; YOU WERE STANDING?

A YES, I WAS.

Q PAUL WAS SEATED?

A YES, HE WAS.

Q WAS HE SEATED ON THE CURB?

A NO. ON THE EDGE OF THE PLANTER.

Q AND HOW FAR WAS HE FROM YOU WHEN HE DISPLAYED THIS ITEM THAT YOU'RE NOT SURE WHAT IT WAS?

A ABOUT THE SAME DISTANCE.

Q SIX FEET?

A ABOUT THERE.

Q WHERE WAS VALERIE?

A I BELIEVE ALMOST TO MY SIDE OR IN FRONT OF ME.

Q AND SHE WAS STANDING, ALSO?

A YES.

[631] Q HOW ABOUT DESMOND?

A I DON'T KNOW WHERE DESMOND WAS AT.

Q WHERE WAS MANUEL RIVERA?

A I HAVE NO IDEA WHERE MANUEL WAS AT.

Q YOU SAID YOU HAD AN OPPORTUNITY TO VIEW THE GUN LATER; IS THAT CORRECT?

A YES.

MS. NAKAKI: YOUR HONOR, I'M REMOVING THE CONTENTS OF PEOPLE'S 3. IT'S BEEN CHECKED BY THE BAILIFF.

Q DO YOU SEE THIS, MR. ALVARADO?

A YES.

Q IS THIS THE GUN THAT YOU HANDLED AFTER THE SHOOTING?

A I CAN'T BE SURE.

Q WHAT IS DIFFERENT ABOUT IT?

A IT LOOKS SMALLER.

Q WHAT LOOKS SMALLER?

A THE GUN.

Q THE WHOLE GUN?

A YES.

Q ARE THE HANDLE -- THE GRIPS THE SAME COLOR THAT YOU RECALL?

A NO. I THINK IT WAS LIGHTER. I DON'T REMEMBER NO BLACK OR WHATEVER COLOR THAT IS IN THE GRIP.

Q THIS IS A REVOLVER, CORRECT?

A YES.

Q WAS THE REVOLVER THAT YOU SAW THAT EVENING BLACK?

[632] A YES.

Q YOU CALLED IT A TAN HANDLE TODAY, CORRECT? THAT'S YOUR RECOLLECTION?

A I DON'T REMEMBER IT BEING THAT DARK.

Q DO YOU RECALL WHEN YOU WERE ASKED BY DETECTIVE COMSTOCK YOU SAID IT HAD A BROWN HANDLE?

A YES.

MS.NAKAKI: YOUR HONOR, IF I MAY, I'LL START PLAYING THE TAPE AGAIN FROM, I BELIEVE, PAGE 242, LINE 6.

(WHEREUPON A PORTION OF PEOPLE'S 8, AND AUDIO TAPE, WAS PLAYED.)

Q BY MS. NAKAKI: YOU TOLD DETECTIVE COMSTOCK THAT YOU SAW THIS ITEM, THAT YOU WEREN'T SURE WHAT IT WAS, BEFORE PAUL APPROACHED THE TRUCK, RIGHT?

A YES.

Q WHEN PAUL PULLED IT OUT OF EITHER HIS POCKET OR WAISTBAND, HE PULLED SOMETHING ABOUT THIS SIZE OUT?

A I CAN'T BE SURE. I NEVER SAW CLEARLY WHAT WAS IN HIS HAND.

Q BUT HE PULLED SOMETHING OUT OF HIS POCKET?

A I BELIEVE SO, YES.

Q SOMETHING EITHER OUT OF HIS POCKET OR WAISTBAND?

A YES.

Q AND IT WAS IN HIS LEFT HAND?

A YES, I BELIEVE.

[633] Q HE TOOK IT FROM HIS LEFT HAND AND PUT IT IN HIS POCKET?

A I'M NOT SURE WHERE HE PUT IT AFTER.

Q HE DID TAKE IT OUT OF EITHER HIS POCKET OR WAISTBAND, CORRECT?

A YES.

Q THIS WAS FROM ABOUT SIX FEET AWAY IN FRONT OF THE DONUT PLACE BY THE PLANTER?

A YES.

Q BUT THIS WHOLE SITUATION WHERE PAUL TOOK SOMETHING OUT OF EITHER HIS POCKET OR WAISTBAND, PULLED IT OUT AND PUT IT BACK IN HIS LEFT POCKET, HAPPENED BEFORE HE APPROACHED THE TRUCK, CORRECT?

A YES.

Q NOW, WHEN PAUL APPROACHED THE TRUCK, YOU APPROACHED THE TRUCK AT THIS POINT, CORRECT?

A YES, AFTER.

Q SORRY?

A AFTER.

Q WHEN PAUL BEGAN WALKING TOWARDS THE TRUCK, YOU ALSO APPROACHED THE TRUCK, TOO, CORRECT?

A YES.

Q JUST BY COINCIDENCE, CORRECT?

A YES.

Q YOU HAD NO REASON TO APPROACH THE TRUCK, CORRECT?

A WELL, I HAD NO REASON TO BRING ANY HARM OR ANYTHING THAT MIGHT HAVE HAPPENED. I HAD NO REASON FOR ANY [634] OF THAT.

Q SO, AT THIS POINT, PAUL IS WALKING TOWARDS THE TRUCK AND YOU DON'T KNOW WHY, CORRECT?

A YES.

Q AND YOU COINCIDENTALLY, AT THE SAME TIME, APPROACH THE PASSENGER SIDE OF THE TRUCK, CORRECT?

A YES.

Q THERE'S NO REASON FOR YOU TO APPROACH THE PASSENGER SIDE OF THE TRUCK, CORRECT?

A YES.

Q DO YOU KNOW THE MAN AT THE TRUCK?

A NO.

Q WERE YOU PLANNING TO COLLECT CARDBOARDS?

A NO.

Q THAT WAS NOT YOUR TRUCK BY THE DUMPSTER, WAS IT?

A NO, IT WAS NOT.

Q SO YOU JUST HAPPENED TO BE APPROACHING THE PASSENGER SIDE OF THE TRUCK AT THIS POINT?

A YES.

MS. NAKAKI: YOUR HONOR, IF I MAY JUST CONTINUE PLAYING.

THE COURT: YES.

(WHEREUPON A PORTION OF PEOPLE'S 8, AN AUDIO TAPE, WAS PLAYED.)

Q BY MS. NAKAKI: MR. ALVARADO, YOU JUST TOLD US THAT YOU HAD, FOR NO APPARENT REASON, WALKED UP TOWARDS THE [635] PASSENGER SIDE OF THE TRUCK, CORRECT?

A YES.

Q NO REASON TO BE THERE?

A YES.

Q JUST GOING FOR A WALK?

A WELL, I HAD BEEN WANDERING AROUND THE WHOLE NIGHT, WALKING AROUND.

Q BUT YOU STOPPED AT THE PASSENGER SIDE OF THE TRUCK, CORRECT?

A YES.

Q FOR NO REASON, CORRECT?

A YES.

Q NOW, YOU HAD STATED PREVIOUSLY THAT YOU DID NOT KNOW IT WAS A GUN. DO YOU REMEMBER BEING ASKED ABOUT WHETHER VALERIE HAD SEEN THE GUN? AND THE QUESTION WAS ON PAGE 243, LINE 4:

"Q DO YOU KNOW IF SHE SAW IT?

"A I HAVE NO IDEA BECAUSE I HAD -- WHEN -- WHEN I LOOKED DOWN AT THE GUN, I DIDN'T LOOK TO SEE WHO ELSE HAD SEEN IT. I LOOKED DOWN TO SEE WHAT IT WAS."

DO YOU REMEMBER TELLING DETECTIVE COMSTOCK THAT?

A YES.

Q DO YOU REMEMBER TELLING HER YOU HAD SEEN THE GUN?

A WELL, YES, BECAUSE AFTER I REALIZE THAT IT WAS A GUN THAT WAS IN HIS HANDS. NOT FROM MY OWN EYES SEEING [636] IT, BUT LATER BEING ABLE TO TALK TO SOMEBODY ELSE AND WHAT THEY HAD SAID.

Q IS THIS MANUEL, THE PERSON YOU TALKED TO?

A YES. WE HAD TALKED AFTER THAT NIGHT.

Q AFTER THAT NIGHT, YOU TALKED ABOUT WHAT HAD HAPPENED?

A THAT NIGHT, TOO.

Q AND THE NEXT NIGHT AND THE NEXT NIGHT, OR SOMETIME AFTER YOU TALKED ABOUT IT WITH MANUEL?

A WHENEVER WE WOULD RUN INTO EACH OTHER AND SEE EACH OTHER SOMEWHERE.

Q SO YOU WOULD DISCUSS ABOUT MR. SOTO PULLING THE GUN OUT OF EITHER HIS POCKET OR WAISTBAND?

A ABOUT EVERYTHING ABOUT WHAT HAPPENED THAT NIGHT.

Q NOW, YOU ARE TELLING US THAT YOU HAD NO IDEA WHAT WAS GOING ON AND YOU HAPPENED TO BE WALKING BY THE PASSENGER SIDE OF THE TRUCK AND STOPPING FOR NO REASON. DO YOU REMEMBER TELLING DETECTIVE COMSTOCK THAT YOU WEREN'T SURE IF PAUL WAS GOING TO PULL OUT THE GUN AS SOON AS HE WALKED UP OR WAIT TO SEE IF THE MAN GAVE HIM A FIGHT? DO YOU REMEMBER TELLING DETECTIVE COMSTOCK THAT?

A YES.

Q SO YOU KNEW PAUL HAD A GUN, CORRECT?

A WELL, YES, AFTER, BECAUSE THIS INTERVIEW WAS AFTER I HAD KNOWN THE FACT

THAT IT WAS A GUN. SO IN COOPERATION WITH THE INTERVIEW, THAT'S WHAT I HAD TOLD HER.

Q SO YOU WERE SPECULATING, IS THAT WHAT YOU'RE [637] SAYING?

A I WAS PRETTY MUCH GUESSING.

MS. NAKAKI: YOUR HONOR, I'M GOING TO CONTINUE WITH THE TAPE.

THE COURT: OKAY.

MR. GUTIERREZ: YOUR HONOR, MAY WE APPROACH?

THE COURT: YES.

(THE FOLLOWING PROCEEDINGS WERE HELD AT SIDEBAR.)

MR. GUTIERREZ: REGARDING THE GUN, IF THERE'S NOT GOING TO BE A PROPER FOUNDATION, THIS JUST AUGMENTS THE PREJUDICIAL ASPECT.

THE COURT: DON'T MAKE ANY MORE REFERENCE TO THAT OBJECT.

MS. NAKAKI: MAY I MAKE AN OFFER OF PROOF?

THE COURT: YOU DON'T HAVE ANY WAY TO AUTHENTICATE?

MS. NAKAKI: YES. LET ME EXPLAIN. THE REASON I WAS SAYING I DIDN'T KNOW IF I WAS GOING TO HAVE REBUTTAL WITNESSES, IN MR. ALVARADO'S INTERVIEW WITH DETECTIVE COMSTOCK HE BASICALLY TELLS DETECTIVE COMSTOCK THAT DESMOND PACHECO, ALONG WITH AN INDIVIDUAL KNOWN AS SHY BOY, COME BY THE NEXT DAY BECAUSE AT THIS POINT MR. ALVARADO, MR. SOTO, AND RIVERA HAD TAKEN THE GUN SOMEWHERE ELSE.

SO I DON'T KNOW WHAT THIS WITNESS IS GOING TO SAY. IF HE SAYS, YES, DESMOND AND ANOTHER PERSON AND I HAVE [638] A PICTURE OF

SHY BOY. HIS ATTORNEY IS ROMAN. MACIAS CAME BACK, PICKED UP THE GUN. ROMAN IS -- MACIAS IS ARRESTED FOUR DAYS LATER. I HAVE THE DEPUTY ON CALL.

SO IF MR. ALVARADO LOOKS AT A PICTURE OF MR. MACIAS -- THAT'S THE WAY THAT WAS WITH DESMOND -- THAT CAME BACK TO THE HOUSE THE NEXT DAY, THE PEOPLE'S POSITION IS THERE IS ADEQUATE CONNECTION FOR THE GUN TOO. THE PROBLEM --

MR. GUTIERREZ; THAT'S A BIG IF. YOU COULD HAVE SHOWN THE PROOF BEFORE YOU SHOWN THE GUN. YOU GOT AN EXPERT TO TALK ABOUT THE GUN, HOW IT WORKS IS SHOWN IN FRONT OF THE JURY. YOU HAVE NO WAY OF BEING POSITIVE THAT YOU CAN CONNECT IT, AND NOW YOU ARE BRINGING IT OUT AGAIN FOR A SECOND TIME BECAUSE YOU'RE SPECULATING THAT MY

CLIENT, IF SHOWN THE PHOTOGRAPH, IS GOING TO BE IDENTIFIED, SOMEBODY WHO APPARENTLY IS ARRESTED WITH THE GUN.

THE BEST WAY TO DO THAT IS SHOW THE PICTURE FIRST.

THE COURT: NO MORE REFERENCE TO THE GUN.

MR. BERNSTEIN: 402 RIGHT NOW. EVEN IF MR. MACIAS, SHY BOY, IS ARRESTED AND THAT'S THE GUN HE'S ARRESTED WITH FOUR DAYS LATER, THERE'S STILL NO LINK THAT THIS IS THE GUN USED IN THIS CRIME.

MR. GUTIERREZ: MR. MACIAS SAYS HE BOUGHT THE GUN FROM A BLACK MAN AT THE PARK.

THE COURT: IN ANY EVENT, UNLESS YOU CAN TIE IT IN, NO MORE REFERENCE TO THE GUN.

MR. GUTIERREZ: PLAYING THE TAPE WITH EVERYTHING?

[639] THE COURT: YES.

MS. NAKAKI: YOUR HONOR, THE PEOPLE'S POSITION IS THIS --

THE COURT: OKAY. AS FAR AS CROSS-EXAMINATION, I'M NOT GOING TO UNDULY RESTRICT YOU. PLAY THE TAPE; MOVE ON. DON'T PLAY THE TAPE AND READ THE TRANSCRIPT AND THEN ASK A QUESTION ON IT. ONE OR THE OTHER.

MS. NAKAKI: YOUR HONOR, WHAT HAPPENED DURING DIRECT EXAMINATION IS THAT THIS WITNESS IS SAYING, WELL, I DID TELL DETECTIVE COMSTOCK, BUT SOME OF THE THINGS ARE WHAT PEOPLE TOLD ME. I THINK THE PEOPLE ARE TRYING TO FIND OUT WHAT HE IS WILLING TO ADMIT FROM HIS OWN PERSONAL KNOWLEDGE WHAT IS TOLD TO HIM.

THE COURT: AND YOU ARE UNDULY CONSUMING THE TIME RIGHT NOW BY PLAYING THE TYPE AND GOING THROUGH THE TRANSCRIPT.

MS. NAKAKI: I'LL JUST PLAY THE REST OF THE TAPE IN ITS ENTIRETY AND TRY TO PINPOINT AREAS.

THE COURT: I DON'T THINK WE NEED THE TAPE AT ALL. GO THROUGH THE TRANSCRIPT.

MS. NAKAKI: THE PROBLEM IS COUNSEL REFUSED TO STIPULATE THAT THIS WAS A TRUE STATEMENT. SO I CAN'T DO THAT. I HAVE THE TAPE AS THE EVIDENCE. I HAVE TO PLAY THE TAPE. BOTH COUNSEL OBJECT TO USE OF THIS AS A COURTESY TRANSCRIPT, SO THE ONLY THING I CAN DO IS USE THIS TO -- AS A GUIDE TO SEE IF THIS WITNESS IS GOING TO SAY, THIS IS WHAT I SAID. IF HE SAYS NO, THEY HAVE NOT STIPULATED THIS IS A TRUE AND CORRECT VERSION OF THE TAPE.

[640] MR. GUTIERREZ: YOU'RE DOING DIRECT.

THE COURT: YOU CAN'T DO BOTH. YOUR CHOICE. ONE OR THE OTHER, NOT BOTH. YOU GOT

THE TAPE, YOU GOT THE TAPE. NO MORE TRANSCRIPT.

MS. NAKAKI: LET ME ASK THIS. I WANT TO BE ABLE TO GO THROUGH AND FIND OUT WHAT PART OF THE TAPE, AFTER I PLAY THE TAPE, WHAT PART WAS --

THE COURT: DON'T PLAY THE TAPE. THE JURY ALREADY HEARD THE TAPE, HEARD IT IN ITS ENTIRETY ONCE, AND YOU'VE GONE THROUGH A PORTION OF IT NOW. THEY'RE GOING TO GET IT BACK IN THE JURY ROOM. USE THIS, BUT DON'T DO BOTH.

MS. NAKAKI: JUST SO I'M CERTAIN THAT I'M NOT GOING TO BE CUT OFF UNDULY, I'LL PLAY THE REST OF THE TAPE BUT WANT TO BE GIVEN THE OPPORTUNITY TO ASK ABOUT SPECIFIC AREAS WITH THIS WITNESS INSTEAD OF STOPPING AND STARTING.

THE COURT: THAT'S EXACTLY WHAT YOU'RE DOING.

MS. NAKAKI: I'LL PLAY THE REST OF THE TAPE. I WON'T KEEP STOPPING AND STARTING IT.

THE COURT: IT WILL TAKE JUST TOO MUCH TIME.

MS. NAKAKI: I THINK IT'S GOING TO BE THAT MUCH LONGER TO GO THROUGH THE TRANSCRIPT IF THE COURT WANTS ME TO DO IT THAT WAY.

THE COURT: WHAT PAGE ARE YOU AT?

MS. NAKAKI: EIGHT MORE PAGES.

THE COURT: ANOTHER 20 MINUTES?

MR. GUTIERREZ: IT'S LONGER THAN THAT WHEN YOU CONSIDER THE BREAKS IN THE TAPE. SHE'S WRITING EVERYTHING DOWN, AND THERE'S PAUSES.

[641] MS. NAKAKI: I'LL JUST PLAY THROUGH PAGE --

THE COURT: YOU DO AS YOU WISH. I'LL -- ANY KIND OF CUMULATIVE, REDUNDANT OBJECTIONS YOU MIGHT HAVE?

MR. GUTIERREZ: ON THE GUN, YOUR ADMONITION --

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT IN THE PRESENCE OF THE JURY.)

MS. NAKAKI: THANK YOU, YOUR HONOR. MAY I PROCEED?

THE COURT: YES.

(WHEREUPON A PORTION OF PEOPLE'S 8, AN AUDIO TAPE, WAS PLAYED.)

Q BY MS. NAKAKI: MR. ALVARADO --

MR. GUTIERREZ: YOUR HONOR, I WOULD ASK THAT THE TAPE TO THAT PORTION BE COMPLETE AND PLAYED TO.

THE COURT: NO.

Q BY MS. NAKAKI: MR. ALVARADO, WHEN YOU WERE ON THE PASSENGER SIDE OF THE TRUCK YOU COULD HEAR SCREAMS, CORRECT?

A WHAT SOUNDED LIKE SCREAMS.

Q YOU COULD HEAR SOMEBODY SAYING, "NO, OH, NO"?

A IT SOUNDED LIKE IT.

Q NOBODY TOLD YOU THAT, CORRECT?

A NO.

Q THAT'S WHAT YOU HEARD CORRECT?

A YES.

[642] Q YOU WERE ASKED HOW FAR PAUL WAS FROM THE MAN. YOU SAID, "ONE TO TWO FEET." YOU COULD SEE THAT, CORRECT?

A NO. I WAS ASSUMING RIGHT THERE.

Q AND YOU ALSO DESCRIBED HOW THE MAN WAS BACKING OFF, CORRECT?

A NOT HOW HE WAS BACKING OFF, BUT HOW HE WENT TOWARDS THE TRUCK AFTER I HEARD THE NOISE.

Q BEFORE THE SHOT, THAT THE MAN SEEMED TO BE BACKING AWAY, TAKING A COUPLE STEPS BACK TOWARDS THE DUMPSTER. YOU COULD SEE THAT, CORRECT?

A I DON'T REMEMBER SEEING THAT.

Q IT'S POSSIBLE YOU COULD HAVE SEEN IT?

A IT'S POSSIBLE.

Q NOW, AFTER YOU HEARD THE SHOT, WAS PAUL ON THE DRIVER'S SIDE OF THE TRUCK WHEN YOU HEARD THE SHOT?

A I BELIEVE SO.

Q WHO WAS ON THE DRIER'S SIDE OF THE TRUCK WHEN YOU WERE STANDING BY THE PASSENGER DOOR?

A I NEVER REALLY SEEN WHO WAS THERE, BUT I'M GOING BY EARLIER WHEN THEY FIRST WALKED UP.

Q WHO WALKED UP TO THE DRIVER'S SIDE OF THE TRUCK?

A PAUL.

Q WHEN YOU SAY "PAUL," YOU'RE REFERRING TO THIS MAN HERE IN COURT TODAY, THE ONE YOU IDENTIFIED, MR. SOTO?

A YES.

Q HE'S THE ONE YOU SAW WALK UP TO THE DRIVER'S SIDE OF THE TRUCK?

[643] A YES.

Q THAT'S WHEN YOU WALKED UP TO THE PASSENGER SIDE?

A YES.

Q DID YOU SEE ANYBODY ELSE ON THE DRIVER'S SIDE OF THE TRUCK?

A I NEVER REALLY LOOKED.

Q SO AS FAR AS YOU KNOW, ONLY PAUL WAS ON THE DRIVER'S SIDE OF THE TRUCK; IS THAT CORRECT?

A WELL, YES.

Q NOW, AFTER YOU HEARD THE SHOT, DID YOU HEAR ANY OTHER SOUNDS?

A I BELIEVE I JUST HEARD SOMETHING THAT SOUNDED LIKE A LOW SCREAM OR -- NOT A SCREAM, BUT LIKE A HOLLER. SOMETHING LIKE THAT.

Q LIKE A REAL SCREAM?

A SOMETHING LIKE A SCREAM, BUT NOT REALLY A SCREAM, A FULL-OUT SCREAM. MAYBE LIKE A -- I'M NOT SURE. I CAN'T REALLY PUT A

WORD TO IT. LIKE MAYBE A LITTLE SCREAM. NOT REALLY A LOUD ONE OR ANYTHING.

Q AFTER YOU HEARD THE SHOT AND THE SCREAM, DID YOU SEE SOMEBODY INJURED?

A NO. I COULDN'T SEE IF THEY WERE INJURED OR NOT.

Q YOU SAW A MAN COMING TOWARDS THE TRUCK; IS THAT RIGHT?

A YES.

Q IT WASN'T MR. SOTO, WAS IT?

[644] A NO.

Q IT WAS ANOTHER MAN, CORRECT?

A YES.

Q AND HE WAS INJURED, CORRECT?

A I COULDN'T REALLY TELL, BUT HE LEANED ON THE TRUCK.

Q WHEN HE LEANED ON THE TRUCK, DID IT APPEAR HE WAS INJURED TO YOU?

A I COULDN'T REALLY TELL.

Q DID YOU SEE BLOOD?

A NO.

Q WHAT WAS THE MAN DOING AS HE WAS LEANING ON THE TRUCK, NOT MR. SOTO, BUT THE OTHER MAN?

A I BELIEVE HE WAS JUST LEANING ON THE TRUCK. I DON'T REMEMBER SEEING HIM DO ANYTHING.

Q WAS HE MAKING ANY SOUNDS?

A I CAN'T REMEMBER.

Q WHAT HAPPENED AFTER YOU HEARD THE SHOT AND SAW THIS MAN, NOT MR. SOTO, BUT THIS MAN LEANING ON THE TRUCK? WHAT DID YOU DO?

A IT FINALLY HIT ME WHAT -- EVERYTHING THAT HAD HAPPENED, AND I REALIZED THAT, YOU KNOW, THE MAN WAS SHOT. I DIDN'T KNOW WHAT TO DO AFTER THAT.

Q YOU WERE ON THE PASSENGER SIDE OF THE TRUCK, AND YOU REALIZED THE MAN HAD BEEN SHOT; IS THAT CORRECT?

A WELL, YEAH, SOMETHING LIKE THAT. I GUESS HE HAD BEEN SHOT OR SOMETHING, BUT I COULDN'T REALLY TELL IF HE WAS INJURED OR -- COULDN'T REALLY TELL.

[645] Q DID YOU CHECK TO SEE IF HE WAS INJURED?

A NO.

Q YOU DON'T KNOW WHAT HAPPENED TO THE MAN?

A NO.

Q DID YOU GO TO THE DRIVER'S SIDE OF THE TRUCK?

A NO, I DID NOT.

Q WHAT DID YOU DO?

A MAYBE AFTER 10 SECONDS OR SO, 10, 15 SECONDS, I REALIZE EVERYTHING THAT HAPPENED. AND I TURNED AROUND AND SEEN EVERYBODY ELSE RUNNING, SO AT FIRST I STARTED WALKING AWAY, NOT KNOWING WHAT TO DO. AND FINALLY WHEN I SEEN EVERYBODY OUT OF SIGHT, I WENT RUNNING MYSELF.

Q YOU WENT BACK TO MANUEL'S HOUSE, CORRECT?

A YES.

Q MR. SOTO WAS THERE?

A YES.

Q THE MAN YOU IDENTIFIED IN COURT TODAY, PAUL SOTO?

A YES.

Q AND YOU SAW SOMETHING ON HIS CLOTHING, DIDN'T YOU?

A NOT ON HIS CLOTHING. I THINK I SAW IT ON HIS HAND.

MS. NAKAKI: YOUR HONOR, I'LL READ FROM THE TRANSCRIPT, AND I'LL BE REFERRING TO PAGE 251.

MR. GUTIERREZ: IT'S NOT CONSISTENT WITH HIS TESTIMONY. OBJECTION. PAGE 251 SAYS ON THE HANDS.

MS. NAKAKI: YOUR HONOR, IF I DIRECT THE COURT AND [646] COUNSEL TO --

THE COURT: WAIT.

OBJECTION SUSTAINED.

MS. NAKAKI: -- LINES 10 THROUGH --

THE COURT: I DON'T HAVE LINE 10. I HAVE LINE 4.

MS. NAKAKI: I HAVE THE COMPLETE TRANSCRIPT. IT GOES BEYOND THAT.

THE COURT: I DON'T HAVE IT.

MS. NAKAKI: LINES 10 THROUGH 18.

THE COURT: YOU MAY SHOW IT TO HIM.

MS. NAKAKI: THE WITNESS HAS AREADY ANSWERED THE QUESTION.

THE COURT: OKAY. HE'S ANSWERED IT, THEN.

Q BY MS. NAKAKI: WOULD IT REFRESH YOUR RECOLLECTION TO REFER TO A TRANSCRIPT OF YOUR INTERVIEW OF OCTOBER 24, 1995, AS TO WHETHER OR NOT YOU SAW BLOOD ON ANY OTHER PART OF MR. SOTO OTHER THAN HIS HANDS?

A YES, IT MIGHT.

MS. NAKAKI: AND I'M GOING TO BE SHOWING THE WITNESS, MR. ALVARADO, PAGE 251, LINES 10 THROUGH 18.

THE WITNESS: (READING.)

Q BY MS. NAKAKI: DOES THAT REFRESH YOUR MEMORY, MR. ALVARADO?

A YES, IT DOES.

Q YOU SAID YOU SAW BLOOD ON HIS HANDS, CORRECT?

A YES.

Q YOU ALSO SAW BLOOD SOMEWHERE ELSE ON MR. SOTO, CORRECT?

[647] A YES.

Q WHERE?

A ON HIS SHIRT.

Q HOW WAS THIS BLOOD ON MR. SOTO'S SHIRT?

A I DON'T UNDERSTAND THE QUESTION.

Q WELL, WAS IT SPLATTERED ON HIS SHIRT, SPLATTERED ON THE CHEST OF THE SHIRT?

A I COULDN'T REALLY TELL. IT WAS ON HIS SHIRT. I DON'T KNOW HOW --

Q DO YOU RECALL TELLING -- I'LL LET THE WITNESS FINISH?

A I --

Q DO YOU RECALL TELLING THE DETECTIVE IT WAS LIKE -- IT WAS JUST LIKE A SPLAT, ALMOST SPLATTERED ON HIS CHEST?

"Q SPLATTERED ON THE CHEST?

"A YES."

IS THAT HOW THE BLOOD WAS ON PAUL SOTO'S SHIRT?

A I BELIEVE SO.

Q NOW, YOU INDICATED THAT YOU HAD SEEN A GUN LATER THAT EVENING, CORRECT?

A YES.

Q AFTER THE SHOOTING?

A YES.

Q AND WHO HAD THE GUN THAT YOU SAW AFTER THE SHOOTING?

A IT WAS JUST IN MANUEL'S BEDROOM ON THE FLOOR.

[648] Q DO YOU KNOW WHO LEFT IT ON THE FLOOR?

A NO, I DON'T.

Q DID YOU DO SOMETHING WITH THAT GUN?

A LATER, YES.

Q NOW, THE GUN THAT WAS ON THE FLOOR, THIS IS IN MANUEL'S BEDROOM?

A YES, IT IS.

Q MANUEL DID NOT HAVE A GUN THAT EVENING, CORRECT?

A TO MY KNOWLEDGE, NO, HE DIDN'T.

Q YOU DID NOT HAVE A GUN THAT EVENING, CORRECT?

A NO, I DID NOT.

Q VALERIE DID NOT HAVE A GUN THAT EVENING, CORRECT?

A CORRECT.

Q DESMOND DID NOT HAVE A GUN THAT EVENING, CORRECT?

A CORRECT.

Q YOU SAID YOU DID SOMETHING WITH THAT GUN LATER THAT EVENING. WHAT DID YOU DO?

A WELL, IN MANUEL'S HOUSE THERE WAS LITTLE BROTHERS, AND I BELIEVE HIS GRANDMOTHER WAS HOME AT THAT TIME AND HIS PARENTS. SO WE HAD AGREED IT WOULD BE BEST WE GET THE GUN OUT OF THE HOUSE AWAY FROM THE CHILDREN.

Q DID YOU TAKE THAT GUN?

A YES.

Q WHAT DID YOU DO WITH THE GUN?

A WE HAD TAKEN IT AND PUT IT BY A PARK.

[649] Q YOU SAY "WE." DID YOU PHYSICALLY PICK UP THAT GUN?

A NOT IN THE HOUSE, NO.

Q WHERE DID YOU PICK IT UP?

A WELL, AFTER WE HAD GONE MAYBE HALFWAY DOWN THE BLOCK, I WAS HANDED IT FROM MANUEL.

Q MS. NAKAKI: YOUR HONOR, I AM GOING TO BE ASKING THE WITNESS TO LOOK AT PAGE 255, BEGINNING LINE 2 THROUGH LINE 5 TO SEE IF IT REFRESHES HIS MEMORY.

THE COURT: VERY WELL.

Q BY MS. NAKAKI: MR. ALVARADO, I WANT YOU TO READ THE TRANSCRIPT BEGINNING LINE 2 THROUGH LINE 5.

A (WITNESS COMPLIES.)

Q DOES THAT REFRESH YOUR MEMORY, MR. ALVARADO?

A YES, IT DOES.

Q YOU PICKED UP THAT GUN, CORRECT?

A CORRECT.

Q AND YOU PUT IT IN YOUR POCKET?

A YES.

Q AND YOU WERE CONCERNED ABOUT MANUEL'S LITTLE BROTHERS AND SISTERS BEING AROUND A GUN, CORRECT?

A YES.

Q SO YOU HID THE GUN, CORRECT?

A YES, I DID.

Q YOU HID IT BY AN ELEMENTARY SCHOOL, DIDN'T YOU?

A YES, I DID.

Q AND YOU HID IT IN SOME BUSHES, CORRECT?

[650] A YES.

Q NOW, THE NEXT DAY DID SOME FOLKS COME TO THE HOUSE REGARDING THE GUN?

A YES, I BELIEVE SO.

Q IT WAS DESMOND PACHECO, CORRECT?

A YES.

Q AND ANOTHER YOUNG MAN, CORRECT?

A YES.

MS. NAKAKI: YOUR HONOR, I HAVE A PHOTOGRAPH I'VE SHOWN TO COUNSEL. IT DEPICTS AN INDIVIDUAL. MAY IT BE MARKED AS PEOPLE'S 11?

THE COURT: VERY WELL.

Q MS. NAKAKI: DO YOU SEE THAT PHOTOGRAPH, MR. ALVARADO?

A YES.

Q THAT PERSON IN THE PHOTOGRAPH WAS THE YOUNG MAN THAT ACCOMPANIED DESMOND PACHECO THE NEXT DAY TO PICK UP THE GUN, CORRECT?

A I'M NOT SURE. I NEVER REALLY SAW THE OTHER MAN. I NEVER LOOKED AT HIM BECAUSE I DIDN'T KNOW HIM.

Q WAS THE OTHER PERSON WITH DESMOND PACHECO A YOUNG MAN?

A YES.

Q WITH A SHAVED HEAD?

A NO. I THINK IT WAS KIND OF GROWN OUT.

Q THIS YOUNG MAN WAS 17 OR 18 YEARS OLD?

A HE LOOKED YOUNGER.

Q ABOUT FIVE-FOUR, FIVE-FIVE, FIVE-SEVEN, [651] SOMETHING LIKE THAT?

A I DON'T KNOW. I'M NOT SURE. I NEVER LOOKED AT HIM LONG ENOUGH.

Q THIS PERSON HAD A SHAVED HEAD WITH A LITTLE BIT OF HAIR?

A YES. IT WAS LIKE A SHAVED HEAD, BUT IT WAS GROWN OUT A LITTLE BIT.

Q AND HE WAS ABOUT 140, 150 POUNDS?

A I CAN'T REALLY TELL.

Q NO FACIAL HAIR?

A I CAN'T REMEMBER FACIAL HAIR.

Q DO YOU REMEMBER GIVING A DESCRIPTION OF THE PERSON THAT ACCOMPANIED MR. PACHECO THAT MORNING?

A NO, I DON'T REMEMBER.

MS. NAKAKI: YOUR HONOR, I'M GOING TO APPROACH WITH PAGE 267, BEGINNING ON LINE 1 THROUGH LINE 23.

THE COURT: VERY WELL.

THE WITNESS: (READING.)

Q BY MS. NAKAKI: DO YOU REMEMBER GIVING A DESCRIPTION OF THIS OTHER INDIVIDUAL THAT ACCOMPANIED MR. PACHECO TO COME TO THE HOUSE TO GET RID OF THE GUN?

A YES, I DO.

Q IT WAS SOMEBODY ABOUT 17, 18 YEARS OLD?

A HE LOOKED AROUND THAT AGE.

Q SOMEWHERE ABOUT FIVE-FOUR, FIVE-FIVE, FIVE-SEVEN?

A I GAVE THAT DESCRIPTION BECAUSE HE WAS SHORTER THAN ME.

[652] Q ABOUT 140, 150 POUNDS?

A HE WAS SKINNY.

MR. GUTIERREZ: OBJECTION; RELEVANCE.

THE COURT: OVERRULED. GO AHEAD.

Q MS. NAKAKI: MEDIUM TO LIGHT COMPLEXION?

A YES.

Q NO FACIAL HAIR?

A THAT I REMEMBER, NO FACIAL HAIR.

Q AND YOU DIRECTED DESMOND AND THIS OTHER PERSON, THIS OTHER YOUNG MAN, TO WHERE YOU HAD STASHED THE GUN BY THE ELEMENTARY SCHOOL, CORRECT?

A CORRECT.

Q AND THIS OTHER YOUNG MAN THAT WAS WITH DESMOND PICKED UP THE GUN, CORRECT?

A CORRECCT.

Q NOW, YOU HAD MENTIONED THAT THAT EVENING YOU WERE JUST WALKING AROUND THIS SHOPPING CENTER, CORRECT?

A YES.

Q BEFORE THIS INCIDENT HAPPENED, CORRECT?

A YES.

Q AND YOU WERE SOMEWHERE BETWEEN WALKING BY THE GREEN BURRITO AND THE YOSHINOYA?

A YES. I WALKED THERE AND SAT BY THE BENCHES IN BETWEEN THE GREEN BURRITO, AND I THINK IT'S A CLOTHING STORE. BUT I HAD BEEN WALKING AROUND THE WHOLE MALL.

Q THIS WAS JUST BEFORE THIS HAPPENED?

A YES. IT WAS LIKE THE WHOLE TIME WE WERE THERE BY THE PHONES.

[653] Q THIS WAS AFTER MIDNIGHT, CORRECT?

A I CAN'T BE SURE. I THINK SO.

Q A NUMBER OF THE STORES WERE CLOSED, CORRECT?

A IN THAT DIRECT AREA, MAYBE THREE OF THEM, THREE OR FOUR OF THEM.

Q YOSHINOYA WAS CLOSED, CORRECT?

A NO.

Q THIS WAS AFTER MIDNIGHT, CORRECT?

A YES.

Q -- WHEN YOU WERE WALKING AROUND?

A I BELIEVE SO.

Q AND GREEN BURRITO WAS CLOSED?

A YES. THE GREEN BURRITO WAS OPEN. I REMEMBER SEEING THE LIGHTS ON IN THERE. I ASSUME THEY WERE OPEN.

Q WERE YOU WALKING BETWEEN THE GREEN BURRITO AND YOSHINOYA, THEN?

A NO. I WAS WALKING BETWEEN THE GREEN BURRITO, AND I THINK IT'S A CLOTHING STORE.

Q AT ONE POINT YOU MENTIONED SOMETHING ABOUT WALKING TOWARDS YOSHINOYA?

A YES. WELL, EARLIER THAT NIGHT I HAD WALKED IN FRONT OF YOSHINOYA, LOOKING OUT ON TELEGRAPH.

Q AT THE TIME WHEN YOU COINCIDENTALLY WERE WALKING TOWARDS THE TRUCK WHEN MR. SOTO WAS WALKING TOWARDS THIS TRUCK, WHERE WERE YOU GOING?

A I HAD NO DESTINATION IN MIND.

Q WERE YOU WALKING -- WERE YOU GOING TO GO TOWARDS YOSHINOYA OR GO TO YOSHINOYA?

[654] A I WAS JUST WALKING AROUND.

Q JUST WALKING AROUND. OKAY. NOW, YOU HAD INDICATED THAT YOU LIVE CLOSE ENOUGH THAT YOU COULD WALK FROM MR. RIVERA'S HOUSE, CORRECT?

A YES.

Q AS A MATTER OF FACT, THE NEXT DAY, INSTEAD OF WALKING HOME FROM MR. RIVERA'S HOUSE, YOU CALLED FOR A RIDE, DIDN'T YOU?

A YES, I DID.

Q SO EVEN THOUGH IT'S WALKING DISTANCE, YOU CALLED FOR A RIDE?

A YES.

Q NOW, YOU ALSO SAID THAT YOU NEVER -- OR THAT YOU TALKED ABOUT THIS CASE OR WHAT HAD HAPPENED WITH MANUEL RIVERA; IS THAT RIGHT?

A YES, THAT'S RIGHT.

Q MANUEL IS A GOOD FRIEND OF YOURS?

A YES. WE KNOW EACH OTHER FROM SCHOOL.

Q YOU WERE LIKE THE BEST OF FRIENDS?

A WE WERE GOOD FRIENDS. WE KNOWN EACH OTHER FROM SPORTS AND FROM SCHOOL.

Q AND YOU INDICATED THAT YOU AND MR. RIVERA HAD DISCUSSED WHAT HAD HAPPENED THAT NIGHT AND SUBSEQUENT TO THAT NIGHT; IS THAT CORRECT?

A YES.

Q DO YOU RECALL WHEN DETECTIVE COMSTOCK ASKED YOU ABOUT WHO YOU DISCUSSED THIS WITH YOU SAID THAT YOU HAD NOT TALKED TO MANUEL ABOUT THIS INCIDENT SINCE IT HAPPENED?

[655] A NO, I DON'T REMEMBER THAT.

MS. NAKAKI: YOUR HONOR, I'LL SHOW THE WITNESS AND -- LET ME BACK UP.

Q HAD YOU TALKED TO ANYBODY ABOUT THIS INCIDENT ASIDE FROM MR. RIVERA?

A I DON'T THINK I HAVE, NO.

MS. NAKAKI: I'M APPROACHING THE WITNESS WITH PAGE 260.

THE WITNESS: WHAT PART?

Q BY MS. NAKAKI: GO AHEAD AND READ THE WHOLE PAGE.

A (WITNESS READING.)

Q DID YOU HAVE AN OPPORTUNITY TO REVIEW PAGE 260?

A YES, I DID.

Q WITH REGARDS TO MANUEL RIVERA, YOU TOLD THE DETECTIVE, WHEN YOU WERE ASKED WHETHER OR NOT YOU TALKED TO MANUEL ABOUT WHAT HAD HAPPENED SINCE THAT NIGHT, YOU TOLD HER, "NO, NO, WE NEVER TALK ABOUT IT," CORRECT?

A YES.

Q WAS THAT TRUE?

A YES, IT IS.

Q YOU JUST TOLD US THAT YOU DISCUSSED THIS WITH MANUEL THAT NIGHT AND SEVERAL SUBSEQUENT TIMES AFTER THAT.

A WELL, I GUESS I COULDN'T REMEMBER WHEN SHE HAD ASKED ME. I COULDN'T REMEMBER IF I TALKED TO HIM ABOUT IT.

MS. NAKAKI: YOUR HONOR, I DON'T HAVE ANYTHING FURTHER, EXCEPT I WOULD LIKE TO APPROACH WITH THE REPORTER, [656] WITH COUNSEL IN PARTICULAR, REGARDING PAGE 267 OF AN INTERVIEW.

(THE FOLLOWING PROCEEDINGS WERE HELD AT SIDEBAR.)

MS. NAKAKI: YOUR HONOR, WITH REGARDS TO THE QUESTIONING ON THE SECOND INDIVIDUAL WHO ULTIMATELY TOOK THE GUN FROM THE LOCATION, THIS WITNESS EVIDENTLY IDENTIFIED THE SECOND PERSON. ALTHOUGH I COULDN'T IDENTIFY THE PHOTOGRAPH AS SHY BOY, I DON'T WANT TO ASK THIS WITNESS WHO HE KNEW HIS NAME AS BECAUSE IT WAS UNDERSTANDING NOT TO BRING HIS NAME IN.

THE PROBLEM IS HE CAN AT LEAST IDENTIFY HIM THROUGH THIS MONIKER AND COINCIDENTLY, ROLAND MACIAS' MONIKER IS SHY BOY. I DON'T KNOW HOW THE COURT PROPOSES HOW I CAN ASK IN A WAY -- I CAN SAY, WELL, YOU KNEW THIS PERSON BY --

MR. GUTIERREZ: MAYBE AFTER I FINISH MY CROSS WE CAN FIGURE OUT A WAY TO MENTION IT.

MR. BERNSTEIN: I DON'T THINK IT MEANS ENOUGH NO MATTER WHAT YOU DO, BECAUSE THE WAY I INTERPRET IT FROM WHAT I UNDERSTAND YOUR OFFER OF PROOF IS, IS FOUR DAYS LATER MR. MACIAS, ALSO KNOWN AS SHY BOY, IS ARRESTED WITH WHAT TURNS OUT TO BE EXHIBIT 3. THAT STILL MAKES NO NEXUS THAT EXHIBIT 3 IS IN FACT THE GUN THAT MR. MACIAS PICKED UP FROM THE PEOPLE OR THAT THE PEOPLE USED IN THE CRIME.

MR. GUTIERREZ: MR. MACIAS GIVES AN INTERVIEW ABOUT [657] THE GUN, SAYING WHERE HE GOT IT, WHO HE GOT IT FROM. IF THEY ARE GOING TO BRING IN MR. MACIAS BUT TO IDENTIFY THAT GUN, THAT'S FINE. BUT NOBODY HAS IDENTIFIED THAT GUN. MY CLIENT THOUGHT IT WAS A LITTLE BIGGER THAN THAT. NOBODY HAS POSITIVELY IDENTIFIED THAT GUN. CERTAINLY, MR. MACIAS HAS NEVER IDENTIFIED THAT GUN. IN FACT,

MY UNDERSTANDING IS WHEN HE SAID WHO HE GOT IT FROM, WHEN HE BOUGHT IT, AND WHERE, IT WASN'T THIS CASE.

THE COURT: ALL RIGHT. AT THE PRESENT TIME I'M NOT GOING TO ALLOW YOU TO GET INTO THAT LINE OF QUESTIONING. ALSO, I SHOULD INDICATE THE RECORD IS IN THE LAST SIDEBAR WE HAD.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT IN THE PRESENCE OF THE JURY.)

MS. NAKAKI: THANK YOU, YOUR HONOR. NOTHING FURTHER.

THE COURT: DO YOU WANT TO -- HOW LONG?

MR. GUTIERREZ: YOUR HONOR, I'LL TRY TO BE BRIEF. FIFTEEN, TWENTY MINUTES.

THE COURT: LET'S GO AHEAD AND TAKE OUR AFTERNOON BREAK. PLEASE REMEMBER MY ADMONITIONS TO YOU, THOUGH. TWENTY MINUTES.

(AT 2:50 P.M. THE JURY WAS EXCUSED FOR A RECESS UNTIL 3:15 P.M.)

THE COURT: ARE WE READY FOR THE JURY?

[658] MR. GUTIERREZ: I THINK WE HAVE A 402.

MS. NAKAKI: IT WOULD BE IN REGARDS TO POTENTIAL REBUTTAL BY THE PEOPLE. YOUR HONOR, AT THIS POINT, HAVING HEARD MR. ALVARADO'S TESTIMONY REGARDING MR. PACHECO AND A SECOND INDIVIDUAL RETURNING TO THE HOUSE THE NEXT DAY TO PICK UP A GUN, THE PEOPLE INTEND TO CALL AS REBUTTAL A MR. DESMOND PACHECO BECAUSE THE PEOPLE ANTICIPATE THAT HE WILL TESTIFY THAT HE DID GO

BACK THE NEXT DAY WITH A ROLAND MACIAS TO MR. RIVERA'S HOUSE.

HOWEVER, MR. PACHECO HAD BEEN INTERVIEWED BY MY OFFICE OR MYSELF TODAY AND HE WILL BASICALLY TESTIFY THAT HE DID GO BACK TO THE HOUSE WITH ROLAND MACIAS TO MR. RIVERA'S HOUSE BUT NOBODY WAS HOME AND THEY WENT TO GO PLAY HANDBALL.

THE RELEVANCE IS THAT WE NOW KNOW WHO THE SECOND PERSON IS THAT GOES BACK TO MR. RIVERA'S HOUSE BASED ON WHAT MR. ALVARADO STATED, THAT MR. PACHECO DID GO BACK TO THE HOUSE. SUBSEQUENT TO THIS EVENT, FOUR DAYS LATER, MR. MACIAS, THE SECOND PERSON, IS ARRESTED WITH PEOPLE'S 3.

A DEPUTY HOLSTON WILL BE CALLED TO TESTIFY BECAUSE HE IS THE ARRESTING DEPUTY AND CAN TELL YOU THAT PEOPLE'S 3 WAS THE GUN

IN THE POSSESSION OF MR. MACIAS FOUR DAYS LATER.

THE COURT: DO YOU HAVE ANYTHING THAT CONNECTS UP THAT GUN WITH THIS SHOOTING?

MS. NAKAKI: INFERENTIALLY.

THE COURT: BALLISTICS?

MS. NAKAKI: NO.

[659] MR. GUTIERREZ: IF I MAY POINT OUT, YOUR HONOR, I FELT MR. PACHECO PROBABLY SHOULD HAVE A LAWYER. ACCORDING TO MR. ALVARADO, HE CAME BACK WITH ANOTHER INDIVIDUAL TO PICK UP THE GUN.

I THINK MS. NAKAKI BELIEVES MR. PACHECO ACTUALLY DID IN FACT COME BACK TO PICK UP THE GUN EVEN THOUGH HE'S GOING TO TESTIFY THAT HE WENT TO PLAY HANDBALL. THEREFORE, HE'S COMMITTING PERJURY. IF HE'S NOT COMMITTING PERJURY, THEN HE WENT TO PICK UP THE GUN.

HE'S AN EYEWITNESS TO A HOMICIDE, AND HE GOES TO PICK UP THE GUN AND TAKE IT AWAY. THAT IS DEFINITELY A P.C. 32. SO EITHER HE'S A P.C. 32 BECAUSE HE'S AN EYEWITNESS TO A SHOOTING AND GOES AND PICKS UP THE GUN THE NEXT DAY OR, TWO, HE'S LYING ABOUT IT ON THE WITNESS STAND, POSSIBLY LYING ABOUT IT BY DENYING IT. SO CERTAINLY THAT OPENS THE DOOR FOR POSSIBLE PROSECUTION, AND HE SHOULD HAVE THE BENEFIT OF COUNSEL.

MOST IMPORTANTLY, THIS MAN, MR. MACIAS, IS ARRESTED FOUR DAYS LATER WITH THE GUN. THERE IS NOTHING TO LINK THIS GUN TO THIS CRIME, NO BALLISTICS, PRINTS, ANYTHING OF THAT SORT, AND MR. MACIAS DESCRIBES WHERE HE GOT THE GUN FROM, WHO HE GOT THE GUN FROM, AND IT HAS NOTHING TO DO WITH THIS CASE. HE INDICATES HE PURCHASED IT FROM A MALE, BLACK. AND I

BELIEVE I READ -- THE REPORTS AS WELL STATES THAT HE BOUGHT IT, I THINK, AT A PARK OR SOMETHING LIKE THAT.

THE COURT: MR. BERNSTEIN.

MR. BERNSTEIN: JOIN, YOUR HONOR. I THINK IT'S BEEN AMPLY COVERED BEFORE THE COURT.

[660] THE COURT: IF THAT'S THE EXTENT OF THE REBUTTAL, THAT REQUEST IS DENIED.

MS. NAKAKI: THANK YOU, YOUR HONOR.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT IN THE PRESENCE OF THE JURY.)

THE COURT: GOOD AFTERNOON, LADIES AND GENTLEMEN.

MR. GUTIERREZ, GO AHEAD.

+REDIRECT EXAMINATION

BY MR. GUTIERREZ:

Q MICHAEL, I'M GOING TO ASK YOU A FEW QUESTIONS ABOUT SOME OF THE QUESTIONS YOU'VE BEEN ASKED ABOUT EARLIER THIS MORNING AND LATER THIS AFTERNOON, OKAY?

A OKAY.

Q THERE WAS A PORTION OF THE TAPE PLAYED TO YOU, AND YOU DISCUSS THAT. I WOULD LIKE TO JUST GO A LITTLE FURTHER, A FEW LINES MAYBE.

(WHEREUPON A PORTION OF PEOPLE'S 8, AN AUDIO TAPE, WAS PLAYED.)

MR. GUTIERREZ: I'M SORRY, YOUR HONOR. APPARENTLY MY CUE IS OFF. WELL, I'LL JUST FORGET THAT. I'LL GO FROM THE TRANSCRIPT. THE

LAST PORTION OF THE TAPE BEING PLAYED, THERE'S A DESCRIPTION GIVEN ABOUT WHAT MIGHT HAVE OCCURRED ON THE OTHER SIDE OF THE LOCATION.

[661] Q YOU WERE ASKED, DO YOU RECALL WHETHER OR NOT THE MAN WHO HAD THE GUN USED THE LEFT HAND OR RAISED HIS RIGHT HAND; IS THAT CORRECT?

A YES.

Q WERE YOU ABLE TO SAY WHICH HAND IT WAS?

A NO, I DON'T THINK I WAS.

Q WHY IS IT THAT YOU WERE UNABLE TO SAY WHICH HAND THE PERSON WITH THE GUN USED WHEN HE GOT -- WHETHER IT WAS THE LEFT OR RIGHT HAND RAISED?

A BECAUSE I NEVER SAW -- I NEVER REALLY LOOKED ON THAT SIDE OF THE TRUCK.

Q WHAT WAS THE LIGHTING LIKE BACK ON THE 23RD AROUND MIDNIGHT? REFERRING TO DEFENSE DOUBLE "E," WHAT WAS THE LIGHTING LIKE ON THE WEST SIDE OF THE DUMPSTER, BASICALLY NORTH OF THE VEHICLE -- SOUTH OF THE VEHICLE?

A I DON'T BELIEVE THERE'S ANY LIGHTING OUT THERE. MAYBE LIKE A STREETLIGHT, BUT FURTHER DISTANCE. MORE CLOSER TO THE STORES.

Q IS IT, SAY, A DARK AREA?

A YES, IT'S A DARK AREA RIGHT THERE.

Q NOW, THIS NIGHT THAT THIS INCIDENT OCCURRED, DO YOU KNOW IF THERE WERE OTHER STORES OPEN IN THE MALL?

A YEAH. I BELIEVE MAYBE CLOSE TO HALF WERE STILL OPEN.

Q WHAT KIND OF STORES WERE OPEN?

A MOSTLY ALL THE FOOD STORES EXCEPT, I THINK, THE GREEN BURRITO. I THINK THERE WAS A PAGER PLACE. I DON'T KNOW IF THEY WERE STILL OPEN, BUT THE LIGHTS WERE ON

[662] Q WHAT ABOUT TACO BELL OR --

A NO.

Q BUT THERE WERE SOME BUSINESSES OPEN?

A YES, THERE WERE.

Q WAS THERE CARS IN THE LOT OF THE MALL?

A YES, THERE WERE SOME.

Q WERE THERE PEOPLE IN THE MALL?

A YES.

Q PEOPLE WALKING?

A YEAH. BY THE OPEN STORES, YES, THERE WERE.

Q OTHER PEOPLE DRIVING IN THE MALL?

A THERE WAS SOME DRIVING BY.

Q WERE THERE CARS PARKED IN THE PARKING LOT AREA OF THE MALL?

A THERE WERE SOME, YES.

Q WHAT ABOUT THE DONUT STORE? OTHER THAN THE SMALL GROUP OF PEOPLE THAT WERE THERE THAT CAME FROM MANUEL'S HOUSE, WERE THERE OTHER PEOPLE IN THE DONUT STORE THAT MAYBE HAD NOT BEEN IN MANUEL'S HOUSE THAT YOU DID NOT KNOW?

A YES, I BELIEVE THERE WERE. I BELIEVE THERE WERE TWO, THREE PEOPLE.

Q SO PORTIONS OF THE MALL WAS OPEN FOR BUSINESS. THERE WAS PEDESTRIAN TRAFFIC, THERE WAS VEHICULAR TRAFFIC, THINGS OF THAT SORT?

A YES.

Q YOU WERE ASKED ABOUT A HONDA, AND YOU DON'T RECALL A HONDA; IS THAT CORRECT?

[663] A THAT'S CORRECT.

Q AND ABOUT WHETHER VALERIE FLAGGED SOMEONE DOWN, YOU DIDN'T RECALL VALERIE FLAGGING SOMEONE DOWN?

A NO. I DON'T REMEMBER SEEING THAT.

Q WHERE DO YOU THINK YOU WERE -- EXCUSE ME. WERE YOU WITH VALERIE ALL THE TIME?

A NO. I HAD BEEN WALKING AROUND. AND I CAN'T REALLY REMEMBER, BUT I KNOW I HAD GONE TO THE DONUT SHOP EARLIER THAT DAY, I THINK. I DON'T REMEMBER IF I WENT IN THERE OR NOT.

Q BUT IF YOU HAD SEEN VALERIE FLAG A MAN DOWN AND GO OVER AND TALK TO HIM AND GET MONEY FROM HIM, SOMETHING, YOU WOULD HAVE REMEMBERED?

A YES. THAT'S SOMETHING I WOULD HAVE REMEMBERED.

Q ESPECIALLY IF IT WAS THE WHITE TRUCK DEPICTED IN DEFENSE DOUBLE "E"?

A YES. I WOULD HAVE REMEMBERED.

Q SO I TAKE IT YOU WEREN'T REALLY MONITORING VALERIE 100 PERCENT OF THE TIME?

A NO, I WAS NOT.

Q WHAT ABOUT MANUEL? WERE YOU MONITORING OR PAYING ATTENTION TO HIM 100 PERCENT OF THE TIME?

A NO, I WAS NOT.

Q WHAT ABOUT PACHECO?

A NO, I WAS NOT.

Q WHAT ABOUT MR. SOTO?

A NO, I WAS NOT.

[664] Q NOW, THE -- THERE WAS SOME PORTIONS OF A TAPED INTERVIEW THAT HAD BEEN PLAYED TO YOU, AND SOME PORTIONS HAVE BEEN PLAYED TO THE JURY. THE ACTUAL INTERVIEW WAS OVER TWO HOURS?

A YES, IT WAS.

Q AT TIMES WHEN YOU WERE ASKED A QUESTION THERE ARE PAUSES. FOR EXAMPLE, A PORTION THAT WAS READ EARLIER AND SOMETIMES YOU PRECEDE A QUESTION WITH "UM," AND YOU PAUSE.

IS THERE ANY REASON WHY YOU ARE PAUSING OR "UM" WHEN YOU'RE TRYING TO --

A JUST RE- -- WERE TRYING TO REMEMBER. I COULDN'T REMEMBER. TRYING TO THINK.

Q FOR EXAMPLE, YOU WERE ASKED TO DESCRIBE WHERE THE GUN MAY HAVE COME FROM, AND YOU INDICATE YOU DON'T KNOW IF IT'S FROM THE LEFT, THE RIGHT, THE FRONT, THE WAIST, FROM THE BACK. DID YOU KNOW WHERE THE GUN CAME FROM?

A NO, I DID NOT.

Q DID YOU SEE IT BEING PULLED OUT?

A NO.

Q WAS THE GUN EVER PULLED OUT AND SHOWN TO YOU LIKE THIS, HELD IN THEIR HAND AND SHOWN TO YOU?

A NO, IT WAS NOT.

Q HOW WAS THE GUN SHOWN TO YOU?

A LIKE A QUICK FLASH, MAYBE, ON THE SIDE OF THE LEG, OR JUST A FEW SECONDS MAYBE.

Q THERE WAS A PORTION OF THE TAPE THAT WAS PLAYED. I WOULD LIKE TO READ THE FOLLOWING TWO LINES, PAGE [665] 241:

"Q SO DID HE HAVE IT OUT JUST LIKE A SECOND, JUST ENOUGH TO FLASH IT?

"A HE -- HE JUST LIKE, JUST ENOUGH TO SHOW."

HOW WAS IT SHOWN? WHY DON'T YOU STAND UP AND MAYBE SHOW US WITH YOUR HAND?

A WELL, I BELIEVE IT WAS JUST -- I DON'T KNOW WHERE IT CAME FROM ON HIM OR ANYTHING,

BUT IT SEEMED LIKE IT WAS JUST SOMETHING LIKE THAT (INDICATING).

MR. GUTIERREZ: YOUR HONOR, HE'S GOT THE PALM OF HIS HAND, AND HE OPENS IT TO THE RIGHT AND TURN IT BACK DOWN.

Q BY MR. GUTIERREZ: YOU CAN SIT DOWN.

DID YOU GET A CLEAR PICTURE?

A NO, I DID NOT.

Q NOW, LATER ON THAT EVENING, YOU AND MANUEL WERE HOME AT MANUEL'S HOUSE AFTER THE INCIDENT?

A YES, WE WERE.

Q WAS MANUEL UPSET?

A YES, HE WAS.

Q WERE YOU UPSET?

A YES, I WAS.

Q DID YOU GUYS DISCUSS ANYTHING ABOUT THE SHOOTING, OR DID YOU TRY TO IGNORE IT?

A WE HAD DISCUSSED A LITTLE BIT OF IT.

Q A LITTLE BIT?

A YES.

Q PRETTY TRAUMATIC INCIDENT, CORRECT?

[666] A YES, IT WAS.

Q AND DID MANUEL WANT THE GUN IN HIS HOUSE?

A NO, HE DID NOT.

Q WAS THE GUN TAKEN SOMEPLACE?

A YES. HE WAS REALLY WORRIED ABOUT HAVING IT AROUND WITH HIS YOUNGER BROTHERS AND SISTERS THERE.

Q AND WHEN YOU AND MANUEL WENT TO TAKE THE GUN AND PUT IT IN THE BUSHES, WERE THERE POLICE ON THE STREETS?

A YES, THERE WAS.

Q WERE THERE HELICOPTERS ON THE STREETS?

A I BELIEVE THERE WAS, YES.

Q WHEN YOU RAN BACK TO MANUEL'S HOUSE AFTER THE SHOTS WERE FIRED, WERE THERE POLICE CARS AT THE SUBSTATION?

A YES. THE SAME CAR THAT WAS THERE EARLIER WAS IN THE SAME SPOT WITH THE, I GUESS, PATROLMAN STILL OUTSIDE OF THE CAR TALKING TO THE SHERIFFS INSIDE.

MR. GUTIERREZ: I FOUND THAT PORTION OF THE TAPE, YOUR HONOR, 247.

Q WHEN YOU WERE ASKED ABOUT HOW FAR SOMEONE MIGHT HAVE BEEN.

"Q COULD YOU TELL IF PAUL RAISED HIS RIGHT ARM OR LEFT ARM?

"A NO, I -- I COULDN'T SEE THAT.

"Q SO YOU COULD NOT SEE WHICH ARM PAUL RAISED?

"A NO."

IS THAT WHAT YOU SAID?

A YES, I DID.

[667] Q WERE YOU ABLE TO SEE FROM THAT SIDE OF THE TRUCK?

A NO, I WAS NOT ABLE TO.

Q YOU INDICATE IN THE TAPE THAT YOU WAITED ABOUT 10 TO 15 SECONDS BEFORE YOU REALIZED WHAT HAPPENED. WHAT DID YOU MEAN BY THAT?

A WELL, I DIDN'T KNOW WHAT WAS TAKING PLACE ON THE OTHER SIDE OF THE TRUCK. AND BY THE TIME I HAD REALIZED AND TOOK NOTICE OF WHAT THE NOISE WAS, I FINALLY STOOD UP AND SEEN EVERYBODY RUNNING.

Q WHEN EVERYBODY RAN, WHAT DID YOU DO?

A I WAITED ANOTHER FIVE SECONDS. I WAS NOT SURE WHAT TO DO. AND THEN I FINALLY

STARTED WALKING AWAY AND THEN STARTED RUNNING WHEN I REALIZED EVERYBODY WAS GONE.

Q HOW DID YOU FEEL ABOUT WHAT HAD HAPPENED?

MS. NAKAKI: OBJECTION, YOUR HONOR; IRRELEVANT.

THE COURT: SUSTAINED.

Q BY MR. GUTIERREZ: YOU WERE ASKED -- A PORTION OF THE TAPE WAS PLAYED REGARDING YOUR CONSUMPTION OF ALCOHOL. I WOULD LIKE TO GO ON TO TWO OTHER LINES ON 228. TO PUT IT IN CONTEXT, I'LL READ THE PORTIONS THAT WERE PLAYED.

"Q WERE YOU A LITTLE BUZZED?

"A A LITTLE BIT.

"Q YOU LOOK KIND OF STUPID, NOT REALLY SURE WHAT YOU WERE DOING?

"A NO, I WASN'T -- I WASN'T ANYTHING, STUPID, OR -- I WAS BUZZED AND HAD BEEN GIGGLING [668] AND ALL THAT, BUT -- "

Q HAD YOU BEEN DRINKING THAT NIGHT?

A YES, I WAS.

Q DID YOU GET DRUNK THAT NIGHT?

A YES, I WAS.

Q DID YOU KNOW WHAT YOU WERE DOING?

A YES.

Q AND YOU WERE ASKED THESE QUESTIONS AND THE TAPE IS PLAYED:

"Q DID YOU HEAR WHAT WAS SAID BETWEEN THE TWO OF THEM?

"A NO.

"Q COULD YOU HEAR WORDS WERE BEING SAID?

"A NO."

DID YOU HEAR ANY CONVERSATION ON THE OTHER SIDE OF THE TRUCK?

A NO, I DID NOT.

Q DID PAUL SAY ANYTHING TO YOU IMMEDIATELY BEFORE GOING TO THE OTHER -- BEFORE GOING TO THE TRUCK?

A NO, HE DID NOT.

Q DID YOU SAY ANYTHING TO THE MAN?

A NO.

Q DID YOU SAY ANYTHING TO PAUL BEFORE HE WALKED OVER TO THE DRIVER'S SIDE OF THE CAR?

A NO, I DID NOT.

Q DID YOU SAY ANYTHING TO PAUL THERE THAT NIGHT?

A NO.

[669] Q WHAT ABOUT AT THE PARTY?

A NO.

Q WHERE WERE YOU AT THE PARTY?

A IN THE ROOM. BUT I WAS MORE TALKING WITH MANUEL AND THEM.

Q WHERE WAS PAUL?

A IN THE ROOM ALSO, BUT I THINK HE WAS WITH VALERIE AND DESMOND.

Q NOW, YOU WERE ASKED ABOUT THE TOWN CENTER EARLIER THAT DAY, HOW MANY KIDS GO TO THE TOWN CENTER. BY "KIDS" -- EXCUSE THE TERM -- YOUNG PEOPLE?

A THERE ARE A LOT. A LOT OF PEOPLE GO THERE.

Q LIKE ABOUT HOW MANY?

A FOR SURE OVER FIFTY MAYBE. FIFTY, SIXTY PEOPLE GO.

Q NOW, WHEN THE MAN, MR. SOTO, WALKED OVER TOWARDS THE TRUCK, DID YOU SEE A GUN IN HIS HAND?

A NO, I DID NOT.

Q WERE YOU EVER SIDE BY SIDE WITH HIM AS HE WAS WALKING TO THE TRUCK?

A NO.

Q WERE YOU EVER AHEAD OF HIM?

A NO.

Q WERE YOU EVER PARALLEL WITH HIM?

A NO.

Q AND MY LAST WORDS TO YOU ARE -- MY LAST QUESTION TO YOU IS A PORTION OF THE TAPE THAT MS. NAKAKI PLAYED:

[670] "Q DID YOU SAY ANYTHING TO PAUL?

"A NO, I DIDN'T.

"Q DID YOU ENCOURAGE PAUL TO DO WHAT HE WAS DOING?

"A NO, I DID NOT."

MS. NAKAKI: YOUR HONOR, OBJECT. THIS IS NOT A QUESTION.

MR. GUTIERREZ: IT'S FOUNDATION TO A QUESTION.

THE COURT: PROCEED.

MR. GUTIERREZ: (READING):

"Q DID YOU ENCOURAGE PAUL TO DO WHAT HE WAS DOING?

"A NO, I DID NOT. I HAD NO IDEA WHAT WAS GOING ON ON THE OTHER SIDE."

Q BY MR. GUTIERREZ: DO YOU REMEMBER ANSWERING THAT QUESTION?

A YES, I DO.

Q WAS THAT TRUE?

A YES, IT WAS.

MR. GUTIERREZ: NO FURTHER QUESTIONS.

THE COURT: MS. NAKAKI.

MS. NAKAKI: NO QUESTIONS.

THE COURT: MR. BERNSTEIN.

MR. BERNSTEIN: NO QUESTIONS.

THE COURT: ALL RIGHT. YOU CAN STEP DOWN.

MR. GUTIERREZ.

MR. GUTIERREZ: THANK YOU, YOUR HONOR. YOUR HONOR, THE DEFENSE WOULD REST.